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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

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Coordination Proceeding)
Special Title (Rule 1550(b)).)
In re TOBACCO CASES II)
This Document Relates to:) JCCP No. 4042
The People of the State of)
California, and American)
Environmental Safety Institute) DEPOSITION OF
v. Philip Morris Incorporated,)
et al., Los Angeles Superior) THOMAS BONFIGLIO
Court, Case No. BC 194217)
The People of the State of)
California, City of San Jose,)
and Paul Dowhall v. Brown &)
Williamson Corp., et al., San)
Francisco Superior Court, Case)
No. 996781)
SERVICE LIST "B")
- - - - -

TAKEN ON: Thursday, June 8, 2000
TAKEN AT: 401 B Street, Suite 1700
San Diego, California
REPORTED BY: Jeannette K. Jessup
CSR No. 8573, RPR

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1 C E R T I F I C A T E

2 I, the undersigned, do hereby certify that I have read
 3 the foregoing deposition and that, to the best of my
 knowledge, said deposition is true and accurate (with the
 exception of the following changes listed below):

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27
 28 THOMAS BONFIGLIO

7

1 SAN DIEGO, CALIFORNIA; THURSDAY, JUNE 8, 2000; 9:10 A.M.

2
 3 THOMAS BONFIGLIO,
 4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5
 6 EXAMINATION BY MR. MCGUIRE:

7 Q. Would you state your name for the record and
 8 give us your business address and telephone number.

9 A. Thomas Bonfiglio. Business address is 2711
 10 North Haskell, H-a-s-k-e-l-l, Avenue, Dallas, Texas
 11 75204. Area code (214) 828-7585.

12 Q. What do you do for a living?

13 A. I'm category manager for cigarettes and tobacco.

14 Q. For whom?

15 A. 7-Eleven, Incorporated.

16 Q. Have you ever been deposed before?

17 A. Yes.

18 Q. How many times?
19 A. Twice.
20 Q. How long ago was the last time?
21 A. About ten years.
22 Q. Okay. Do you understand you're under oath?
23 A. Yes.
24 Q. And you understand that the same penalty of
25 perjury applies to this testimony even though we're not
26 in a room and we have our jackets off and it's rather
27 informal?
28 A. Yes.

8

1 Q. If there's any questions that you have about the
2 proceeding as we go along, you could ask me. If you want
3 to take a break, ask. More likely than not we will
4 accommodate that. If I ask a question you don't
5 understand, tell me, "I don't understand the question"
6 and I will try to rephrase it so that we're on the same
7 basis with my question and your answer.

8 If you give an answer, I'm going to assume and
9 argue to the court at a later date that you understood
10 the question and this was the answer. When the
11 deposition is over, you'll get a transcript of the
12 deposition, have a chance to look through it. You can
13 make changes to it, not of substance but of what you
14 think you said at the time. Any other changes I'll have
15 an opportunity to comment on at the time of trial if, in
16 fact, we use this deposition there. All right?

17 A. Okay.

18 Q. You're a category manager for 7-Eleven,
19 Incorporated. Tell me what your responsibilities are or
20 job title description.

21 A. I guess my major areas of responsibility are
22 determining the items carried, product assortment,
23 recommended product assortment, adding and deleting, and
24 items, sales and promotions plans, merchandising in terms
25 of displays and fixturing, working out programs and
26 agreements with manufacturers.

27 Q. Who do you report to?

28 A. Currently I report to a vice president of

9

1 non-foods, whose name is Jeff Hamill, H-a-m-i-l-l.

2 Q. Did you say nunn, n-u-n-n?

3 A. Non, n-o-n. Non-foods.

4 Q. What is the relationship, business relationship,
5 between non-foods and 7-Eleven, Incorporated, if you
6 know?

7 A. I'm sorry. Business relationship?

8 Q. Yeah. Are they the company that owns 7-Eleven,
9 Incorporated?

10 A. Oh, I'm sorry. Non-foods is a division of our
11 merchandising -- we have a foods area and a non-foods
12 area.

13 Q. Okay. Non-foods. I got you.

14 A. Right.

15 Q. I'm sorry. I thought it was --

16 A. No.

17 MR. KAMMER: It was a trick answer.

18 BY MR. MCGUIRE:

19 Q. So you report to a division vice president?

20 A. No. They're not called division vice
21 presidents. He's a vice president of merchandising.

22 Q. But his area would include non-food items?

23 A. Right. As opposed to fresh food items.
24 Q. And how long have you been in the position of a
25 category manager?
26 A. Since January of 1997.
27 Q. How long have you been with 7-Eleven,
28 Incorporated?

10

1 A. A little over 18 years.
2 Q. How long have you been involved with the sale of
3 cigarettes or other tobacco products?
4 A. Since January of 1997.
5 Q. Okay. Was there anything -- is there anything
6 about your job since January 1997 that was unique or
7 different from any of the prior assignments or jobs that
8 you had for 7-Eleven, Incorporated?
9 A. I've never been a category manager before. So
10 certainly managing categories differ from my prior
11 responsibilities.
12 Q. What was your prior -- immediately prior
13 responsibility?
14 A. I was involved with the developing business
15 requirements and business processes and system design for
16 our retail information and scanning systems.
17 Q. Where are you from originally?
18 A. Chicago.
19 Q. And have you worked in other cities other than
20 Dallas in the 18 years you've been with 7-Eleven,
21 Incorporated?
22 A. Yes.
23 Q. Who owns 7-Eleven, Incorporated, if you know?
24 A. The majority owners are Ito Yakodo, I-t-o
25 Y-a-k-o-d-o, I believe. From Japan.
26 Q. Okay. And is there a relationship between --
27 business relationship between 7-Eleven, Incorporated, and
28 Southland, Incorporated?

11

1 A. There is no more Southland, Incorporated. It
2 was changed to 7-Eleven.
3 Q. Just a name change?
4 A. Yes.
5 Q. Do you know why that was done?
6 A. It was said that it was done because it better
7 identifies who we are.
8 Q. Do you own stock in 7-Eleven, Incorporated?
9 A. No.
10 Q. Do you have any stock options?
11 A. No.
12 Q. Do you have any stock in any other corporation
13 that owns an interest in 7-Eleven, Incorporated?
14 A. No.
15 MR. MCGUIRE: One of those goes up here, folks.
16 MR. KAMMER: You got one.
17 MR. MCGUIRE: I know, but one's going to be for
18 the witness.
19 (Discussion off the record.)
20 BY MR. MCGUIRE:
21 Q. Okay. So one of the new things in your job --
22 that you had never been a category manager before. Is
23 there anything unique about the category manager for
24 cigarettes and tobacco products as opposed to the
25 category manager for noncigarettes and tobacco products
26 that you're aware of?
27 A. Other than the products, nothing.

28 Q. Are cigarettes marketed differently at 7-Eleven
12
1 than Twinkees?
2 A. Yes.
3 Q. Are there any special rules that you're aware of
4 that 7-Eleven follows regarding the marketing of
5 cigarette products?
6 A. Can you give me a little better definition of
7 marketing, because my response would be that, you know,
8 Twinkees are not an age-restricted product and cigarettes
9 are. To me that would be the major difference, if that's
10 what you mean by marketing.
11 Q. Well, that would be included in what I meant by
12 marketing. What else is age restricted that 7-Eleven
13 sells in the stores?
14 A. Alcoholic beverages.
15 Q. Anything else?
16 A. I'm not entirely sure. I think there may be
17 some -- I know there's an age restriction on lighters,
18 for example, in the state of California.
19 Q. Is that recent?
20 A. I don't know. I don't know when it happened.
21 Q. Did it happen while you were a category manager?
22 A. I don't think so. I think it's been in the
23 books. I'm not sure.
24 Q. In any event, your best recollection today is
25 that when you took over in January of 1997 as the
26 category manager of cigarettes and tobacco products,
27 lighters in the state of California were a restricted
28 sale item?
13
1 A. I'm not sure.
2 Q. So you're not sure whether that's true or not,
3 whether it happened --
4 A. Right.
5 Q. -- after 1997?
6 A. Right.
7 Q. Who else do you have, if anybody, to assist you?
8 Who was your immediate subordinate that assisted you in
9 the sale of cigarettes for 7-Eleven?
10 A. I have a category assistant.
11 Q. Who is that?
12 A. Name is Annalee, A-n-n-a-l-e-e, it's all one,
13 Smith, S-m-i-t-h.
14 Q. Are there any other states that you're aware of
15 that have restrictions on the sale of lighters?
16 A. Not that I'm aware of.
17 Q. How does 7-Eleven sell lighters in California,
18 as opposed to how it is sold in every other state?
19 What's the difference?
20 A. Identification requirement.
21 Q. How is that done?
22 A. Asking the person for proof of age.
23 Q. Is there a policy or procedure that says in the
24 event of a sale of a lighter, you have to ask and you
25 have to get an I.D. before they can be sold?
26 A. I'm not sure there is a policy.
27 Q. Who would be sure about what your policy is on
28 that in the corporation?

14
1 A. I'm not sure.
2 Q. Well, let me ask you kind of like a hypothetical
3 question. It may be easier to answer this way. Suppose

4 the question comes up as to whether or not we're
5 complying with whatever the laws might be in California
6 in the sale of lighters. Who would you go to in the
7 corporate chain of command?
8 A. Probably -- probably the division merchandiser.
9 Q. And did you give me his name?
10 A. Actually, it's a she now. Susan McDonald.
11 Q. And what would she know that you don't know?
12 A. If there was a -- how they provided the policy
13 to the stores.
14 Q. Would she be higher up in the chain of command
15 than you?
16 A. No.
17 Q. She would be lateral?
18 A. Yes.
19 Q. And what's the function or purpose of the
20 division merchandiser?
21 A. Dealing more with local issues.
22 Q. To provide information to the category managers
23 so that they can be in compliance with what these local
24 issues are?
25 A. That's sometimes.
26 Q. And what about for the sale of cigarettes
27 themselves? Are there any restrictions or -- other than
28 -- well, are there any restrictions regarding that that
15
1 are part of the policy and procedure of 7-Eleven?
2 A. Yes. There's -- there is a come of age training
3 program, it's called, that all employees go through.
4 Q. Okay. Anything else?
5 A. There is a -- when an item that is flagged as an
6 age-restricted item in our database is scanned, there is
7 a prompt on the register telling the employee that they
8 are to verify age -- excuse me -- verify age.
9 Q. Is there anything else?
10 A. No.
11 Q. All right. When was the prompt system made part
12 of the policy or procedures?
13 A. I couldn't really give you an exact answer
14 because it was rolled out over stores over the last year
15 and a half or so. So it depends on the store.
16 Q. When you were working in the scanning issues,
17 the scanning systems, was this one of the things you
18 worked on?
19 A. No. I didn't work on that specific one, but I
20 was aware of it.
21 Q. You were aware that there was work being done on
22 that?
23 THE REPORTER: I'm sorry. I didn't get an
24 answer.
25 THE WITNESS: I was aware that there was work
26 being done on that.
27 BY MR. MCGUIRE:
28 Q. And was this the initiation of this prompt
16
1 system in response to the tobacco lawsuits?
2 A. No.
3 Q. And the come of age training program, can you
4 tell me a little bit more about that. For example, when
5 was it initiated?
6 A. I can't tell you when it was started.
7 Q. Do you know whether it was initiated prior to
8 the time that you took over as category manager?

9 A. Yes.
10 Q. And have you gone through the program?
11 A. Yes.
12 Q. How long does it last?
13 A. About two and a half hours.
14 Q. Is there literature that's provided to
15 participants?
16 A. Yes.
17 Q. How extensive a document is that?
18 A. I'm not sure.
19 Q. Who would have a copy of it?
20 A. Training department.
21 Q. Who's in charge of the training department?
22 A. I'm not sure. He's in charge, but I can give
23 you a name. I'm not sure who's in charge of it. Ed
24 Mendes, M-e-n-d-e-s.
25 Q. Okay. Where is his office?
26 A. In Dallas.
27 Q. You say all employees go through this training
28 program?

17

1 A. Yes, sir.
2 Q. Okay. Describe what the program was like, this
3 two and a half hours. But don't take two and a half
4 hours, if you would.
5 A. It begins with trying to impress upon them the
6 importance of ensuring that we are, in fact, verifying
7 age on all sales of age-restrictive products. Gives them
8 some pictures of people. I'm doing this from recall
9 because it's been a long time since I went through this.
10 But I believe we give them pictures of people saying, "Do
11 you think this person's 18?" And we show them that they
12 aren't. Talk about second-party sales, about being
13 cautious, that it doesn't appear that someone of age is
14 buying something for someone that's not of age. Some
15 confrontational, I guess, if you would, or some ways to
16 avoid confrontation over the situation. I'm not sure I
17 can recall anything more specific than that.
18 Q. How many employees do you have?
19 A. I'm not sure. Guess, I can guess.
20 Q. Well, give a -- guess is -- you know, all sorts
21 of flags go up when we use that word. So we like to use
22 "estimate" when we want a response. So give me an
23 estimate. And that can include a range.
24 A. Okay. Employees of 7-Eleven or including our
25 franchisees and their employees? That's where I was
26 going to go.
27 Q. So when you answered the question and you said
28 every employee goes through this training program, what
18
1 were you thinking of? That only 7-Eleven employees, or
2 is that also franchisees?
3 A. To the best of my knowledge, all -- all
4 employees do.
5 Q. Okay. That being the case, let's -- if all
6 employees go through it, let's first say how many
7 employees are there for -- do you have corporate stores?
8 Is that the way we look at this?
9 A. Yes.
10 Q. Are they called C-stores in some of your
11 literature?
12 A. No. Just corporate stores.
13 Q. Just corporate stores?

14 A. We have roughly 2000 corporate stores.
15 Q. Is that number roughly correct for the last two
16 years?
17 A. Yes.
18 Q. Okay. And how many franchise stores are there?
19 A. 3200, roughly.
20 Q. In the state of California do you know what the
21 breakdown might be with respect to corporate versus
22 franchise?
23 A. Almost 100 percent franchise. I believe we have
24 some training stores here that are corporate.
25 Q. Has it been almost 100 franchise stores in
26 California since you took over the category manager job?
27 MR. EATON: 100 percent you mean?
28 MR. MCGUIRE: Did I say --

19

1 MR. EATON: You said 100, number.
2 MR. MCGUIRE: Oh, I'm sorry. I meant 100
3 percent.
4 MR. EATON: Right. That's what I was saying.
5 BY MR. MCGUIRE:
6 Q. Okay. And, now, getting back to the first
7 question. How many employees do you have in your
8 company-owned stores?
9 A. My estimate would be that there's approximately
10 12 employees per store.
11 Q. Okay. 2400. And how about the franchise
12 stores?
13 A. Same number per store, would be my estimate.
14 Q. Now, when you become a franchisee of 7-Eleven,
15 Incorporated, what type of -- is there a continuing
16 relationship between the corporation and the franchise
17 or --
18 A. Yes, sir.
19 Q. I'm sorry. The franchisee. You are the
20 franchisee, right?
21 A. Yeah.
22 Q. Okay. And can you summarize for me what that
23 continuing relationship entails or encompasses.
24 A. Well, there's a franchise agreement, which I'm
25 not very familiar with. But there's a franchise
26 agreement where we provide certain things to the
27 franchisees for a percentage of the gross profits.
28 Q. Okay. Is one of the things you provide

20

1 advertising?
2 A. We provide some advertising, yes.
3 Q. Does the franchisee participate monetarily in
4 the cost of that, or is that --
5 A. I don't believe so.
6 Q. -- franchise? Does the franchisee, is he or
7 her, they, required to advertise themselves?
8 A. No.
9 Q. Spend so much money on advertising?
10 A. Not that I'm aware of.
11 Q. Do you know whether they do so anyway?
12 A. Not that I'm aware of.
13 Q. So is it accurate for me to say that as far as
14 advertising is concerned, the advertising programs for
15 7-Eleven, even though they're franchise stores in
16 California, is something that's done by the corporation
17 home office in Dallas?
18 A. The preparation of the advertising, yes, that

19 would be.
20 Q. Also the frequency of the advertising?
21 A. Yes.
22 Q. How much money is spent on advertising?
23 A. I couldn't tell you that.
24 Q. Okay. Well, I don't mean how much -- does the
25 home office determine -- I'm using home office for a
26 short.
27 A. Yes, they do.
28 Q. Is there a requirement that a minimum amount of
21
1 advertising has to be done by the franchise agreement?
2 A. I don't know.
3 Q. Does the franchise agreement go on in
4 perpetuity? In other words, there's no end to this
5 agreement, or is there an end point in sight?
6 A. I believe there are a number of different
7 agreements, depending on when they signed. And I'm not
8 familiar with the end dates on them, but I think most of
9 them have end dates.
10 Q. If the franchisee decides or determines that
11 they want to sell a restricted product to a minor, what
12 repercussions, if any, that you're aware of, could occur
13 from the franchiser to the franchisee?
14 A. Well, I'm not quite sure I understand what you
15 mean. When he decides to -- when he makes a decision to
16 do so, or it's something that's done in error?
17 Q. Let's do the former. I'm a franchise owner and
18 I decide that my bottom line requires me to sell
19 cigarettes to whoever comes in the door -- or I'll make
20 it a little less rampant. Someone comes in the door, I
21 don't check -- even though I've gone through the come of
22 age program, I don't check, and none of the people that
23 work for me check. Is there some mechanism that's either
24 in the franchise agreement or in some other agreement
25 that permits 7-Eleven, Incorporated, to take some action
26 to enforce its policies on the point of sale franchisee?
27 A. I don't think I have the knowledge of our
28 franchise agreement to answer that.
22
1 Q. Okay. Would you expect that there would be
2 something?
3 A. Would I expect that there would be something?
4 Q. Yes.
5 A. It would only be my guess.
6 Q. Okay. Okay. We don't want you to guess. Every
7 employee -- is it a requirement of the franchise
8 agreement that every employee that works in a franchise
9 store has to go through the come of age program?
10 A. I'm not sure.
11 Q. I thought you said a few answers ago that
12 everybody has to go through this?
13 A. I think I was probably referring to corporate.
14 And I'm going under an assumption. But, once again, it's
15 an assumption that the franchisees' employees do as well.
16 Q. Has 7-Eleven, Incorporated, ever been sued or
17 cited for violation of the Penal Code in the State of
18 California regarding the sale of cigarettes to minors?
19 A. I don't know.
20 Q. Do all of the stores in California have the
21 prompt system installed?
22 A. I'm not sure.
23 Q. Do all the corporate stores have the prompt

24 system installed?
25 A. I'm not sure we're 100 percent. I think if not,
26 we're very close to 100 percent.
27 Q. I guess you've already told me you're not really
28 familiar enough with the franchise agreement to answer

23

1 questions regarding that; is that right?
2 A. Yeah, I've never worked in an operational end
3 with franchisees. So I would not be dealing -- I've
4 never dealt with the agreements.
5 Q. Okay. Let's try and concentrate on the category
6 that you are the manager of. More specifically, have you
7 in -- since 1997, become aware of any complaints made by
8 any law enforcement agencies regarding the sale of
9 cigarettes against the local jurisdiction laws by
10 7-Eleven stores?

11 A. California?
12 Q. I'm going to make it broad. Anywhere.

13 A. Yes.
14 Q. Okay. And the same question regarding
15 California.

16 A. Not true in California.
17 Q. Tell me about what you are aware of.
18 A. I am aware that in the state of Missouri there
19 is an action, I guess, being taken now due to violations
20 of sale of tobacco products to minors.

21 Q. Who is a minor in Missouri?
22 A. 18 -- below -- less than 18.

23 Q. Who's a minor in California?
24 A. I believe it's 18 as well.

25 Q. Is there a different minority for alcohol than
26 there is for tobacco?

27 A. I'm not sure.
28 Q. Who, if anybody, for 7-Eleven would know the

24

1 answer to those questions?
2 A. Our legal department.
3 Q. And this action in Missouri, is this brought by
4 the Attorney General of Missouri?

5 A. I believe so.
6 Q. Is the name of the case the Attorney General vs.
7 Southland Corporation?

8 A. No, it wouldn't be Southland Corporation. But
9 I'm not sure exactly the name of the case.

10 Q. How did you become aware of this case?

11 A. Received a message from -- I got a message from
12 our legal department.

13 Q. How long ago did you receive this notice?

14 A. About two weeks, I believe.

15 Q. What do you know about the case?

16 A. I think it was a phone call, as a matter of
17 fact. I'm not sure it was a message. It was a phone
18 call.

19 Q. Who was the phone call from, if you remember?

20 A. I really don't.

21 Q. What do you remember about what was told to you?

22 A. Just that there was being -- there was a lawsuit
23 being filed by the state of Missouri because of
24 violations of sales or violations of the restrictions
25 involving the sale of cigarettes to minors.

26 Q. Has 7-Eleven, Incorporated, been sued by any
27 Attorney Generals regarding violations of the Master
28 Settlement Agreement?

1 A. Not that I'm aware of.

2 Q. Does the Master Settlement Agreement prescribe
3 certain marketing and sales practices involving
4 cigarettes?

5 (Whereupon, Mr. Foster entered the proceedings.)

6 MR. EATON: Lacks foundation.

7 THE WITNESS: I'm sorry. I didn't get it.

8 MR. EATON: It's just an objection.

9 MR. KAMMER: You can answer.

10 THE WITNESS: I'm not entirely familiar with it.
11 But I believe there were certain things that the
12 manufacturers cannot do.

13 BY MR. MCGUIRE:

14 Q. Are you aware that there are certain things that
15 retailers cannot do?

16 A. As far as -- certain things that retailers
17 cannot do?

18 Q. Like one thing would be not to let the
19 manufacturers do what they can't do in your stores.

20 MS. TUCKER: Is that a question or statement?

21 MR. MCGUIRE: It's an example.

22 MR. EATON: Assumes facts not in evidence.

23 THE WITNESS: No.

24 BY MR. MCGUIRE:

25 Q. For example, do your stores sell or permit the
26 sale of logo items?

27 A. Do we? No.

28 Q. Do your stores permit your customers to buy

26

1 cigarette logo items like T-shirts, bags, caps?

2 A. Well, no, because those are the kinds of items I
3 don't believe cannot be sold.

4 Q. Well, do you have any idea whether any of your
5 stores, for example, have an 8x10 placard which says, "If
6 you want to buy a logo item right at the point of sale,
7 dial 1-800 Marlboro and we'll send you a catalog and you
8 can buy all the logo items you want"?

9 MR. KAMMER: I'm going to object to the
10 question. When you say "your stores," it's not clear to
11 me whether you're asking whether these are company stores
12 or franchise stores.

13 MR. MCGUIRE: I mean stores in California.

14 MR. KAMMER: He said 100 percent of the stores
15 in California are franchise stores.

16 MR. MCGUIRE: He said "practically," but that's
17 what I meant. To me, it doesn't make any difference if
18 the answer is different. If it's a corporation company
19 store versus a franchise store, then we'll explore that.

20 BY MR. MCGUIRE:

21 Q. But as of right now do you know that there are
22 stores -- whether or not there are stores in California
23 that permit -- that advertise the sale of logo items by
24 asking the customer to call 1-800 Marlboro?

25 A. No, I don't.

26 Q. Do you believe that that would be a violation of
27 the MSA?

28 MR. EATON: Calls for a legal conclusion.

27

1 BY MR. MCGUIRE:

2 Q. As you understand it.

3 A. As I understand it?

4 Q. Yes, sir.

5 A. That it would not.
6 Q. It would not.
7 A. That's my understanding. They can still do it.
8 Q. Okay. And what do you base that on?
9 MR. KAMMER: Excuse me. I want to object to
10 this line of questioning. The understanding of the MSA
11 has all been moved to be not part of this deposition.
12 You can ask what their business practices are before and
13 after.
14 MR. MCGUIRE: I don't agree with what you said.
15 But let's have the --
16 MR. KAMMER: I can read you what the judge said,
17 but there's no sense you and I debating it today.
18 MR. MCGUIRE: Yeah, I would like to. I was at
19 that hearing also.
20 MR. KAMMER: I know.
21 MR. MCGUIRE: My understanding is that not that
22 we couldn't ask any questions. My understanding was
23 there was an objection and that he did not foreclose us
24 from asking about the practices before and after the MSA,
25 and he just said his understanding was what -- it would
26 not violate the MSA.
27 MR. KAMMER: What Judge Prager said is you
28 cannot ask what the subjective understanding of the MSA

28

1 was. That's as clear as it can be. So I'm going to
2 instruct the witness not to answer.
3 MR. EATON: Move to strike the testimony up to
4 that point on that subject.
5 MR. MCGUIRE: Overruled.
6 MR. KAMMER: Don't be confused by the lawyerish.
7 BY MR. MCGUIRE:
8 Q. Yeah. Let's see. Am I correct that 7-Eleven,
9 Incorporated, is knowingly advertising logo items in its
10 stores today in the state of California?
11 MR. KAMMER: I object to the form of the
12 question. Has in the stores or has only a few stores in
13 the state of California? And it's not legally
14 responsible for the acts of its franchisees.
15 BY MR. MCGUIRE:
16 Q. You can answer.
17 A. Could you repeat the question.
18 MR. MCGUIRE: Could you repeat the question.
19 (Record read.)
20 THE WITNESS: No.
21 BY MR. MCGUIRE:
22 Q. Do any 7-Eleven stores, franchise or otherwise,
23 have 1-800 Marlboro placards in their stores?
24 A. I don't know.
25 Q. Does 7-Eleven, Incorporated, have an agreement
26 with Philip Morris, Incorporated, that there will be a
27 display of the 1-800 Marlboro placard at point of sale in
28 7-Eleven's franchise or company stores?

29

1 A. No.
2 Q. Has the 1-800 Marlboro placard at one time been
3 in all stores --
4 A. I don't even know what the 1-800 Marlboro
5 placard is.
6 Q. Then how do you know? How were you answering?
7 What was the basis of your question -- of your answer?
8 A. Your question was, is there an agreement that we
9 would have such a thing.

10 Q. Yes.
11 A. I have no agreement that we would have such a
12 thing, whatever that thing is.
13 Q. So, first of all, you've never seen the placard
14 that advertises if you want to buy Marlboro gear -- just
15 -- it's a red placard, has the Marlboro gear logo on it
16 and it says "dial 1-800 Marlboro."
17 A. I have seen that type of material in the past,
18 yes. Different versions of that.
19 Q. Okay. And is that type of promotional item in
20 California stores with the knowledge of 7-Eleven,
21 Incorporated?
22 MS. TUCKER: Objection; asked and answered.
23 THE WITNESS: Not that I'm aware of.
24 BY MR. MCGUIRE:
25 Q. What type of promotions does 7-Eleven,
26 Incorporated, agree can be conducted regarding cigarettes
27 in its franchise stores in California?
28 A. Well, first of all, the franchisee has to agree
30
1 to do it. So we can't agree -- we cannot agree to do
2 them on behalf of the franchisees. Once the franchisee
3 does agree to participate, then the types of promotions
4 that we currently recommend or suggest or participate in
5 would be what are normally called buy-downs or
6 value-added offers, such as buy two, get one free.
7 Q. Anything else?
8 A. No.
9 Q. What type of signage does 7-Eleven,
10 Incorporated, put in its company stores regarding the
11 sale of cigarettes, examples of it?
12 A. Signage that is created by 7-Eleven,
13 Incorporated?
14 Q. I was thinking of -- I'm going to say any kind
15 of signage, whether it's created by a manufacturer or by
16 7-Eleven.
17 A. We provide signage supporting buy-downs, which
18 would basically list the brands and the price.
19 Q. Okay.
20 A. General brand name signs such as Marlboros.
21 It's pretty much limited to brand, price. And if it's an
22 offer such as a buy two, get one free. That sign, type
23 of signage.
24 Q. What about No Bull Winston, R.J. Reynolds
25 promotion, where customers can back a Nascar driver in
26 order to win a million dollars? Have you promoted that
27 in the stores?
28 MS. TUCKER: Objection; vague as to time.
31
1 MR. MCGUIRE: In California, sorry.
2 MS. TUCKER: I just objected; vague as to time.
3 THE WITNESS: I think in some of the POP that
4 they provided, sometimes there's been that type of
5 message.
6 BY MR. MCGUIRE:
7 Q. What's POP?
8 A. Point of purchase. Sorry.
9 MR. KAMMER: You fooled the whole room worth of
10 lawyers.
11 BY MR. MCGUIRE:
12 Q. When you said in some of the POP they provided,
13 do you mean POP material?
14 A. That's correct.

15 Q. Okay. So the 1-800 Marlboro sign that I was
16 discussing earlier with you would be a POP type of
17 device, correct?
18 A. That's correct.
19 Q. And are there any other POP promotions that
20 you're aware of by other -- other than the Marlboro gear
21 and the No Bull Winston?
22 A. Let me try and -- I'm not sure I understand the
23 question. Could you try that again.
24 Q. Yeah. Other than the two we've talked about.
25 There's the No Bull promotion and then there's the
26 Marlboro gear promotion, are you aware of other type of
27 promotional material that involves placing signage in
28 your stores or your franchise stores with the permission

32

1 of the franchisee? And I'm assuming that has to be as
2 well -- does the franchisee have to approve any of these
3 promotional items, or are they required to place them if
4 the company agrees to place them?

5 MR. KAMMER: Excuse me for interrupting. I
6 object to the form of the question. It's incredibly
7 compound.

8 MR. EATON: Also misstates prior testimony as to
9 1-800 Marlboro.

10 BY MR. MCGUIRE:

11 Q. Let's go ahead and see if I can make this one
12 question instead of two or three. I want to talk to you
13 about the subject matter of promotional material that
14 appears in 7-Eleven stores. And if there's a distinction
15 in your answer between a company-owned store and a
16 franchise store, I want you to bring that to my
17 attention. Otherwise, I'm going to treat them the same.
18 First underlying question is, does every agreement that
19 7-Eleven, Incorporated, makes with the tobacco
20 manufacturers have to be also agreed upon by individual
21 franchise owners?

22 A. Yes.

23 Q. Is it your experience that they usually agree to
24 whatever promotional agreements that you make on behalf
25 of 7-Eleven?

26 A. I'm going to have to -- there's two areas here.
27 We're talking agreements and then promotions. And
28 they're really rather separate.

33

1 Q. Okay. Explain to me how that is.

2 A. There is a retail display allowance agreement.
3 They're generally called RDA agreements. And every
4 franchisee who wants to participate must agree to
5 participate individually in those RDA agreements with a
6 particular manufacturer.

7 Q. Okay. And what is, just briefly, a retail
8 display agreement, an RDA? Does this have to do with
9 where the cigarettes will go, how much of -- whether
10 they'll be centered or on the edge, or whether they'll be
11 behind the counter or not behind the counter?

12 A. That's part of it.

13 Q. What else is involved in those agreements?

14 A. Sometimes a number of particular items that will
15 be carried.

16 Q. Okay.

17 A. Participation in certain promotional events,
18 such as buy-downs.

19 Q. Okay.

20 A. Certain elements of POP. P-O-P. Point of
21 purchase.
22 Q. Let me just ask you to expand a little bit.
23 What type of elements of POP are you talking about?
24 A. Like a permanent Marlboro sign or a permanent
25 Camels sign.
26 Q. Now, when you say a permanent sign, is this
27 something that is only the name Camel, the name Marlboro?
28 A. In our case, yes.

34

1 Q. Okay. All right. What else would there be?
2 A. Amount of space, positioning of space, perhaps,
3 brands that must be carried, the number of sku that must
4 be carried, POP, and participating in certain promotional
5 events which we have approval of.
6 Q. When you use promotional events, expand on that
7 at bit. Under the pen number written here of RDAs, we're
8 still talking about those, right?
9 A. Right.
10 Q. So what do you mean by that? I'm thinking
11 Nascar stuff. I think you're thinking of something
12 totally different.
13 A. The main things will -- are participating in
14 certain value-added offers, like a buy two, get one free,
15 like a buy three, get two free, like a dollar off, or
16 like a buy-down, those types of things.
17 Q. All right. Is there anything else that would be
18 part of the RDA, typically part of an RDA type agreement?
19 A. I think those are the major ones.
20 Q. Now, is it your experience that significantly
21 all or most of the franchisees agree to the RDAs that are
22 negotiated by the corporation?
23 A. Most.
24 Q. Okay. And it's in their best interest to agree
25 to these because they have the corporation dealing with
26 the manufacturer and attempting to maximize profits?
27 A. That's correct.
28 Q. What was the other area that -- you said there

35

1 were two areas. There's the RDA and there's the --
2 A. When you're dealing with the individual theme,
3 if you will, events, such as tying into a Nascar, et
4 cetera, et cetera, and those are not specifically in the
5 RDA agreements. Those are one by one review with
6 manufacturers and either recommended or recommended that
7 we participate.
8 Q. Can you think of any since 1997 that you have
9 recommended not -- no participation by the corporation,
10 these type of -- let's call them theme advertising or
11 promotion?
12 A. Yes. Sometimes if sweepstakes offers, which
13 just add a lot of clutter on the sales counter and don't
14 really produce anything in terms of -- I don't feel
15 produce anything in the way of benefit in terms of sales.
16 Q. Do the manufacturers tell you that they think
17 they do and it brings people in and that's why?
18 A. Sure.
19 Q. "Yes"?
20 A. Yeah.
21 Q. Have you ever agreed that, yeah, that's a pretty
22 good sweepstakes offer; I'm going to use that in our
23 stores or recommend it to the franchisees?
24 A. Sometimes.

25 Q. Cowboys Place, have you recommended that that be
26 used?

27 A. Well, that's not -- well, Cowboys Place is just
28 a -- I don't consider that an -- an event.

36

1 Q. What do you consider that?

2 A. That's kind of like 7-Eleven. It's just a name.
3 It really doesn't have much meaning for me, to be honest.

4 Q. Do you know what kind of meaning it has to your
5 customers?

6 A. No.

7 Q. When you think of Cowboys Place, what --

8 A. I mean, other than it probably relates to
9 Marlboro.

10 Q. Is that type of signage -- does that appear in
11 7-Eleven company stores?

12 A. Uh-huh.

13 Q. And does that type of signage appear in a
14 majority, significant majority of the California
15 franchise stores?

16 A. Probably, yeah.

17 Q. What type of consideration does 7-Eleven,
18 Incorporated, receive in exchange for allowing that
19 signage to appear in their stores?

20 A. That type of signage is the permanent type of
21 Marlboro signage that I talked about as part of the RDA
22 agreement.

23 Q. And how about Pleasure to Burn, do you have any
24 Pleasure to Burn signs that you allow in your stores?

25 MS. TUCKER: Just so we're clear, we're talking
26 about at the present time, correct? Because I'm a little
27 -- maybe I'm missing something here, but from the
28 questions, I can't tell if you're talking about right now

37

1 at this moment or sometime in the past.

2 MR. MCGUIRE: I'm talking about from 1997 on.
3 And I'm assuming --

4 MS. TUCKER: Thank you.

5 MR. MCGUIRE: -- that he would tell me we used
6 to if it's, in fact, a practice that they don't continue
7 to follow or use.

8 THE WITNESS: Pleasure to Burn, I think -- I
9 think that's something that Brown & Williamson is using,
10 I think. And it may be on some price call-outs where we
11 got Lucky's priced, and it may have a little tag on it,
12 Pleasure to Burn. I'm not sure what brands it's related
13 to.

14 BY MR. MCGUIRE:

15 Q. You said Donald Williamson?

16 A. Brown & Williamson. I'm not sure if that's
17 true.

18 Q. Probably broken the heart of some advertising
19 executive by not knowing that it's Camel.

20 A. It is Camel?

21 Q. Yeah. So let me go back to that. Do you
22 have -- there are a series of posters and logos regarding
23 Pleasure to Burn as the copy that appears on the
24 photographs. Have you placed any of those in or outside
25 of any stores in California?

26 A. We have a Camel sign in some stores, and it may
27 carry that Pleasure to Burn. If that's their tag line,
28 yes, we do.

38

1 Q. Does it have an image on it that's in your
2 stores? By "image," I mean a person.
3 A. I don't think so. I think it's got an
4 anatomically correct Camel, I believe, I think.
5 Q. So it's got an anatomic -- what do you mean by
6 that?
7 A. I mean it's not a Joe Camel.
8 Q. Okay. So it's a real camel or a picture of a
9 camel, not a cartoon?
10 A. Right.
11 Q. Did 7-Eleven stores formerly carry images of Joe
12 Camel in your stores?
13 A. Formerly, yes.
14 Q. When did you take them out -- first of all, let
15 me ask you, did you take them out?
16 A. Uh-huh.
17 Q. By "you," I mean 7-Eleven.
18 A. Uh-huh.
19 Q. Why?
20 A. I don't know. It was actually before I took the
21 category over.
22 Q. Okay. Did you take them out because the tobacco
23 companies that put them in asked you to take them out?
24 A. I'm not sure.
25 Q. The Joe Camel image, I'm going to call a
26 cartoon --
27 A. Yeah.
28 Q. -- just between you and I or for purposes of

39

1 this deposition to describe it. Is there any other
2 cartoon-type advertising that is going on with 7-Eleven's
3 permission in their stores, franchised or otherwise, in
4 the state of California?
5 A. Regarding any product?
6 Q. Regarding any cigarette product.
7 A. No. None that I'm aware of.
8 Q. Do you carry any Virginia Slims advertisements?
9 A. We may have some shelf strips that say Virginia
10 Slims.
11 Q. Are you aware of a tear-off advertisement that
12 allows customers to take a Virginia Slims tear-off,
13 2x3-inch square, that allows people to get a Virginia
14 Slims clothing catalogue?
15 A. No.
16 Q. Has 7-Eleven done any advertising -- excuse me.
17 Has 7-Eleven's advertisements in -- that it uses in its
18 stores in California, which I know are a few, changed
19 since December of 1998?
20 A. Yes.
21 Q. Okay. What has changed? Again, this is
22 cigarettes products we're talking about.
23 A. In most of our stores we've been able to remove
24 counter displays for cigarettes.
25 Q. Anything else?
26 A. Many of our stores we have taken down what are
27 called cigarette overhead pack merchandisers which had in
28 our stores generally a Marlboro sign in it.

40

1 Q. Anything else?
2 A. We've taken down -- thank you -- a clock that
3 had a non-cartoon Camel on it, a non-cartoon. A non
4 again. Okay.
5 MR. EATON: This may be an accent thing going

6 on.
7 MR. MCGUIRE: It is.
8 BY MR. MCGUIRE:
9 Q. It's a non, n-o-n?
10 A. Not a cartoon Camel. I'm sorry.
11 Q. That's okay.
12 MR. EATON: I was thinking Sally Fields and the
13 cap.
14 BY MR. MCGUIRE:
15 Q. Anything else, sir?
16 A. I think that's basically it.
17 Q. Why did you remove the counter displays?
18 A. Well, we felt that it was, quite frankly, just a
19 matter of time before they were legislated against, and
20 that -- and it was just the right thing to do.
21 Q. What is a counter display?
22 A. Counter displays at the sales counter, at the
23 register in the register locations.
24 Q. Have you removed them in all stores?
25 A. Not all stores. In order to relocate them
26 requires space behind the counter. We don't -- we've
27 been unable to do that in approximately 80 percent of the
28 stores because of physical constraints, but we're working
41
1 through the rest yet in order to do that.
2 Q. Was the use of counter displays something that
3 was addressed in any agreement?
4 A. Yeah, it was. Yes.
5 Q. With the manufacturers?
6 A. Yes.
7 Q. And the removal of this counter display -- well,
8 while there were counter displays, was there any
9 consideration that went to 7-Eleven as a result of using
10 counter displays?
11 A. Yes.
12 Q. What type of consideration? Money?
13 A. Yes.
14 Q. And when these were removed, did that result in
15 a loss of money?
16 A. No. We were able to rewrite contracts or take
17 an option to have the displays visible behind the
18 counter, but not on the counter.
19 Q. Did you personally -- were you personally
20 involved in the decision to remove the counter displays?
21 A. I was involved in the decision, yes.
22 Q. Okay. Who else was involved in the decision at
23 7-Eleven, Incorporated?
24 A. Virtually our entire executive committee.
25 Q. Would you tell me who that is and what their job
26 titles are.
27 A. Gary Rose, G-a-r-y, R-o-s-e, Senior Vice
28 President of Merchandising. At the time, Dennis Potts,
42
1 P-o-t-t-s, was the non-foods V.P. at that time. Jim
2 Keyes, K-e-y-e-s, who was, at that time, the -- who is
3 now the CEO. I'm not sure exactly what his title was
4 then.
5 Q. When you --
6 A. Clark Matthews, President.
7 Q. President of what?
8 A. Of 7-Eleven. Who was just -- he's no longer --
9 he's now retired. He was chairman of the board. Excuse
10 me. President and chairman of the board.

11 Q. Anyone else on this executive committee?
12 A. I think that's about it. Those are the key
13 players.
14 Q. And when was this first discussed?
15 A. Probably towards the end of 1997.
16 Q. When was it first implemented?
17 A. In 1998. Most of it in 1999.
18 Q. Was there any reluctance on the part of the
19 manufacturers to agree that the counter displays would be
20 removed?
21 MS. TUCKER: Objection.
22 MR. EATON: Calls for speculation, lacks
23 foundation.
24 THE WITNESS: I guess I could just say that we
25 were able to come to an agreement on it.
26 BY MR. MCGUIRE:
27 Q. Did you have -- you had face-to-face
28 communication with a representative from the tobacco

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1 manufacturers that were involved in having counter
2 displays with the company, weren't you?
3 A. Uh-huh.
4 Q. "Yes"?
5 A. Yes.
6 Q. Okay. And based on those communications, were
7 they reluctant -- people that you dealt with personally,
8 reluctant to agree to have this part of their marketing
9 and promotion taken away from them?
10 MR. EATON: Same objections.
11 THE WITNESS: Not if we were able to provide
12 adequate visibility in a nonaccessible or
13 behind-the-counter scenario.
14 BY MR. MCGUIRE:
15 Q. Was the removal of the counter displays the
16 result of any study performed by 7-Eleven?
17 A. No.
18 Q. Who initiated the "let's remove the counter
19 display" point? 7-Eleven or the tobacco manufacturers?
20 A. I think it was probably about the same time,
21 quite frankly.
22 Q. In other words, you were coming to the
23 conclusion that we ought to get rid of these at the same
24 time the tobacco companies were saying we don't need them
25 anymore?
26 A. No. We were being -- we were being -- there
27 was, by state or by municipality, restrictions coming
28 into play on counter displays. And, you know, we just

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1 basically thought that sooner or later it would probably
2 become pretty much the norm not to be able to have those
3 types of displays. So that we ought to be proactive and
4 getting in away from them.
5 Q. What's your understanding as to what the problem
6 was with having cigarette counter displays?
7 A. Just accessibility.
8 Q. In terms of -- were you concerned about
9 pilferage? Is that what was behind all of this?
10 A. No.
11 Q. Well, you certainly -- was it because you wanted
12 for your employees to have to get something and give it
13 over that was restricted and that might prompt them to
14 ask about age?
15 A. That was one of the considerations.

16 MS. TUCKER: I'm sorry. Could you read back
17 that question.
18 (Record read.)
19 BY MR. MCGUIRE:
20 Q. The question didn't sound very good. But,
21 basically, this is a restricted item that if you put them
22 behind the counter, your employees would have to be
23 involved in the sale physically; isn't that true?
24 A. Well, our employees were always involved with
25 sale because they would have to ring it up to begin with.
26 Q. But they would have to handle the item?
27 A. Yes.
28 Q. And that's like an additional prompt, isn't it?

45

1 A. You could say that.
2 Q. Isn't that something that went on in your coming
3 of age program? Did you discuss that in the coming of
4 age program?
5 A. Discuss? I'm sorry. Discuss what?
6 Q. Discuss the keeping restricted items in a place
7 where at the point of sale an employee has to be involved
8 in handing the item over to the person who's buying it?
9 A. No.
10 Q. What other reasons were there for removing this
11 counter display?
12 A. The two basic reasons were the feeling that it
13 was something we were going to have to do in the future.
14 And that it would, in fact, put cigarettes in a less
15 accessible area in terms of not being on the sales
16 counter right in front of everybody that walks up to it.
17 Q. That's one reason. What was the other one?
18 A. There was actually two reasons.
19 MS. TUCKER: Objection. Two --
20 MR. MCGUIRE: Maybe you can read the answer
21 back.

22 (Record read.)
23 THE WITNESS: So less in your face, if you will,
24 and being proactive in trying to merchandise in the way
25 we felt would be the way of the future.
26 BY MR. MCGUIRE:
27 Q. And are the lighters still -- are there still
28 counter displays --

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1 A. Yes.
2 Q. -- of lighters in California?
3 A. Yes, I believe so. Yes.
4 Q. And is there any discussion going on to make the
5 lighters -- put the lighters behind the counter as well?
6 A. No.
7 Q. Is there also the same movement going on where
8 you're seeing more and more jurisdictions restricting the
9 sale of lighters?
10 A. No.
11 Q. Just California?
12 A. To my knowledge.
13 Q. Do you know if any other states are considering
14 instituting that restriction?
15 A. Not that I'm aware of.
16 Q. The overhead rack, why was that done away with?
17 A. It was, quite frankly, an eye sore. It
18 inhibited the view into the store from the exterior,
19 which is somewhat of a security concern. It made it
20 difficult to service a customer because the customer

21 couldn't see the products, made it difficult for the
22 clerk to determine what it is the customer was
23 requesting.
24 Q. Has there been any -- last item. I'm sorry.
25 Let me start again here. The clock that was removed,
26 what was the reason for that?
27 A. To restrict all our cigarette POP to the area
28 that cigarettes were actually merchandised in. Or
47
1 permanent POP.
2 Q. Okay. Give me an example of what type of
3 temporary POP advertising or merchandising, whatever the
4 appropriate word is, done in California stores.
5 A. There would be window banners from time to time,
6 which generally support a buy-down event. And, I
7 believe, probably in the last year or so we may have had
8 one pole sign supporting buy-down.
9 Q. What do you mean by "pole sign"?
10 A. Something that would be in the parking lot.
11 Q. Okay. Anything else?
12 A. Interior, small, temporary signs on top of the
13 cash register pointing out the buy-down pricing.
14 Q. Do you know what a dangler is?
15 A. Yeah.
16 Q. What's a dangler?
17 A. Dangler is a piece of point of purchase that's
18 affixed usually to the front of a counter or displays to
19 call out a price or a product offer.
20 Q. Do you use any cigarette dangles?
21 A. Yes.
22 Q. In California?
23 A. Yes.
24 Q. And other than price, what other types of
25 information is conveyed in the dangler advertisements
26 that are used?
27 A. I can't give you specific, but generally it
28 would be something like -- it might say "Marlboro, buy
48
1 three, get two free." And it might say "cowboy country"
2 or something like that on it. Some kind of phrase.
3 Q. Have you seen the catalogue dangles?
4 A. I have not seen them, no.
5 Q. Have you been in any stores in San Diego?
6 A. No, not recently.
7 Q. Do the cigarette manufacturers inspect or audit
8 the conduct of the franchisees to determine whether or
9 not they are appropriately participating in promotional
10 events that are part of the agreements --
11 A. Yes.
12 Q. -- that they signed up with?
13 MR. EATON: Calls for speculation.
14 THE WITNESS: Okay.
15 MR. MCGUIRE: No, it doesn't.
16 BY MR. MCGUIRE:
17 Q. You answered "yes"?
18 A. I mean, they visited the stores on a regular
19 basis.
20 Q. Okay. What do you base that on?
21 A. My knowledge that they do.
22 Q. Personal knowledge?
23 A. Yes.
24 Q. Okay. And have you participated in any disputes
25 between the cigarette manufacturers and a franchise owner

26 in California where the issue was failure to comply with
27 promotional requirements?

28 A. No.

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1 Q. Does 7-Eleven have arrangements currently,
2 promotional arrangements with the five major cigarette
3 manufacturers?

4 A. No.

5 Q. Which manufacturers does 7-Eleven currently have
6 promotional agreements or contracts with?

7 A. Philip Morris, R.J. Reynolds and Brown &
8 Williamson.

9 Q. In 1997, when you took over your present job,
10 was 7-Eleven, Incorporated, dealing exclusively with
11 Philip Morris?

12 A. No.

13 Q. Have they ever dealt exclusively with Philip
14 Morris?

15 A. No. In one market area for a period of time.

16 Q. Okay. And in 1997, when you took over the job,
17 were you also -- was Philip Morris, R.J. Reynolds and
18 Brown & Williamson also participating at that time in
19 promotional events with 7-Eleven, Incorporated?

20 A. No.

21 Q. How did it change?

22 A. Brown & Williamson was added as a recommended
23 participant -- recommended RDA program in July of 1999.

24 Q. Who recommended them?

25 A. 7-Eleven recommended it to our franchisees.

26 Q. Why did you do that?

27 A. In order to maximize display allowance dollars
28 and value-added offers to our customers.

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1 Q. Prior to adding Brown & Williamson in July of
2 1999, was 7-Eleven, Incorporated, contracting, entering
3 into RDA agreements with only Philip Morris and R.J.
4 Reynolds?

5 A. For a period going back for some time. I
6 couldn't tell you exactly how long. But, yes, probably
7 for four or five years, at least.

8 Q. And do you know whether those agreements that
9 preceded the adding on of Brown & Williamson in July of
10 1999 required 7-Eleven to contract only with Philip
11 Morris and R.J. Reynolds and no other tobacco companies?

12 A. It's difficult to answer that. I guess in a de
13 facto way, yes.

14 Q. Can you explain that for me a little bit more.

15 A. If I wanted to add a third party, the
16 requirements would basically accelerate with the other
17 two for display space to the point where it would be
18 impractical to be able to do it.

19 Q. Okay. As I understand your answer, I'll need
20 you to tell me, yeah, that's basically what I mean, is it
21 wasn't per se exclusive, but there was a requirement. If
22 you added another party to the RDA, you had to add more
23 space, and there's only a limited amount of space that
24 you had available, right?

25 A. Correct.

26 Q. So is it true then that in July of 1999 Philip
27 Morris and R.J. Reynold had to agree to allow Brown &
28 Williamson to participate?

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1 A. I wouldn't say that.

2 Q. How did you accommodate this addition of Brown &
3 Williamson?
4 A. New agreements with all three manufacturers
5 effective the same time.
6 Q. And did the new agreements eliminate Philip
7 Morris's and Reynolds' ability to get more space if you
8 added Brown & Williamson, or did it eliminate the problem
9 that prevented it from going on before then?
10 A. It eliminated the -- it made it practical to be
11 able to add a third party, is about the most accurate way
12 I could say it.
13 Q. Did Brown & Williamson and Philip Morris both
14 know that 7-Eleven, International -- excuse me --
15 7-Eleven, Incorporated, was negotiating to add a third
16 cigarette manufacturer to its RDA?
17 A. I'm sure they were aware, yes.
18 MS. TUCKER: I'm going to object as calling for
19 speculation.
20 MR. KAMMER: You can answer it if you can.
21 THE WITNESS: Yes, I'm sure that they did.
22 BY MR. MCGUIRE:
23 Q. Did the consideration paid for these RDA
24 agreements with Philip Morris and R.J. Reynolds decrease
25 as a result of adding Brown & Williamson?
26 A. One did, one didn't.
27 Q. Who did and who didn't?
28 A. Philip Morris's decreased.

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1 MS. TUCKER: I'm sorry. I couldn't hear the
2 answer.
3 MR. MCGUIRE: He said Philip Morris.
4 THE WITNESS: Philip Morris's decreased.
5 MS. TUCKER: Thank you.
6 THE WITNESS: But we opted for a certain level
7 of payments. We changed the agreement. So understanding
8 when we changed the agreement that it would be a
9 different payment level.
10 BY MR. MCGUIRE:
11 Q. Did this change here result in an increase, a
12 decrease or no change in the number of cigarettes sold by
13 7-Eleven?
14 MR. EATON: Calls for speculation.
15 MS. TUCKER: Lacks foundation.
16 THE WITNESS: Well, with -- with all the other
17 conditions going on today, it's pretty hard to determine
18 what, in fact, was causing anything to happen with sales
19 in that category with increased retails in cigarettes.
20 Less usage, whatever. I mean, it's hard to determine
21 exactly what causes volume sometimes.
22 BY MR. MCGUIRE:
23 Q. Did you reach an opinion one way or the other
24 whether this was successful? In other words, we're
25 coming up on a new -- let me strike it and start again.
26 These RDA agreements are going to be
27 renegotiated next month; is that correct?
28 A. No.

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1 Q. Do they get renegotiated for the following year?
2 A. The Reynolds' and the Brown & Williamson's
3 agreements run through year-end 2001.
4 Q. And what about Philip Morris?
5 A. For lack of a better word, it's almost an
6 evergreen. There is no end date really. It's as long as

7 both parties want to participate.
8 Q. If, in fact, we were negotiating these
9 agreements today, would you sign on for another couple
10 years on behalf of the company?
11 A. I don't know. I'd have to think about that.
12 Q. Your previous answer about it's hard to tell
13 what's going on, what factors are influencing the sale of
14 cigarettes that you're aware of on behalf of the company?
15 MR. EATON: Calls for speculation, calls for an
16 expert opinion, lacks foundation.
17 THE WITNESS: Well, I don't have any -- any
18 facts to support it. But appears there's a decline in
19 demand in the marketplace. Less people purchasing less
20 product, it appears. And I think the higher retails are
21 probably reducing usage.
22 BY MR. MCGUIRE:
23 Q. You mean a higher price?
24 A. Higher prices, yeah.
25 Q. Okay. Anything else?
26 MR. EATON: Same objection.
27 MS. TUCKER: Join.
28 THE WITNESS: No, I can't think of anything

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1 else.
2 BY MR. MCGUIRE:
3 Q. Who is the -- is there a person at 7-Eleven,
4 Incorporated, that is specifically charged with the
5 responsibility of marketing cigarette products?
6 A. Well, I would probably be the key person.
7 Q. Do you have a marketing budget for cigarette
8 products?
9 A. No.
10 Q. Is it accurate that substantially all of your
11 marketing efforts are done by the companies themselves?
12 A. Yes.
13 Q. By companies, I meant the manufacturers.
14 A. Yeah. My marketing budget, if you will, is
15 really only for certain temporary POP elements, such as
16 window signs.
17 Q. Do you know what secondhand smoke is?
18 A. Yeah, generally, sure.
19 Q. What is it?
20 MR. EATON: Calls for an expert opinion.
21 Go ahead, sir.
22 THE WITNESS: My nonexpert opinion is that it's
23 smoke that you may be exposed to from somebody else's
24 tobacco products.
25 BY MR. MCGUIRE:
26 Q. Does the company agree that secondhand smoke is
27 dangerous?
28 A. No. Does the company agree? I'm sorry. Could

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1 you -- I'm sorry --
2 Q. You're here today as the person most
3 knowledgeable?
4 A. Right.
5 Q. And I've been asking you questions, except where
6 I've said personally, as a representative of the company.
7 Okay. I'm going to ask you a series of questions now
8 that I want you to answer on behalf of the company.
9 That's why you're here, or to tell me "I don't know."
10 A. Okay.
11 Q. And we'll go for someone else in the company

12 that could answer that question. So the first one is
13 does the company agree that secondhand smoke is
14 dangerous?
15 MR. EATON: Assumes facts as to the word
16 "agree."
17 THE WITNESS: I don't know.
18 BY MR. MCGUIRE:
19 Q. Is secondhand smoke a known carcinogen?
20 MR. KAMMER: Objection to the form of the
21 question. If you get back to whether the company knows
22 this, that's permissible. But at the moment you're
23 asking an individual personal question.
24 MR. MCGUIRE: No, I'm asking if the company
25 agrees.
26 MR. KAMMER: You didn't say that. Try
27 rephrasing the question.
28 MR. MCGUIRE: I'm sorry. Did I say that?
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1 MR. KAMMER: No, I wouldn't make this up.
2 MR. MCGUIRE: I'm sorry, Bill.
3 BY MR. MCGUIRE:
4 Q. Does the company agree that secondhand smoke is
5 a known carcinogen?
6 MR. EATON: Same objection as to "agree."
7 MS. TUCKER: And it also calls for an expert
8 opinion.
9 THE WITNESS: I don't know.
10 BY MR. MCGUIRE:
11 Q. Okay. Does the company agree that the
12 Department of Health and Human Services of the United
13 States of America has declared that secondhand smoke is a
14 known carcinogen?
15 MR. EATON: Same objection as to "agree."
16 THE WITNESS: I don't know that.
17 BY MR. MCGUIRE:
18 Q. Do you know if secondhand smoke -- excuse me.
19 Do you agree that secondhand smoke causes respiratory
20 illnesses in humans?
21 A. I don't know that.
22 Q. Well, I asked you. Did you agree to it or not.
23 A. I'm having a hard time trying -- once again,
24 please bear with me. I don't understand what you mean
25 when you say do I agree. What I'm saying is, I can't
26 answer the question because I don't know one way or
27 another. Is that an appropriate answer?
28 Q. Well, it's the one you gave.
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1 A. Okay.
2 Q. And I certainly would tell you how I'd like to
3 see you answer it.
4 MR. KAMMER: Don't let him tell you that either.
5 THE WITNESS: I'm trying to be responsive. But
6 I'm also trying to understand that I'm asking --
7 answering along the same lines that you're thinking.
8 MR. MCGUIRE: I understand, sir, and I think --
9 MR. KAMMER: Excuse me, let me just -- and I
10 think that Mr. McGuire is not trying to mislead you when
11 he said, "do you agree." He really means does the
12 company agree.
13 THE WITNESS: Does the company agree? I don't
14 think the company knows.
15 BY MR. MCGUIRE:
16 Q. Does anyone in the company or have you ever

17 participated, personally, in any discussions with other
18 company employees about secondhand smoke?
19 A. No.
20 Q. Does the company have a policy regarding smoking
21 in the workplace?
22 A. I believe our policy is to follow local
23 regulations, whatever they are.
24 Q. Well, if the State of California has declared
25 secondhand smoke as being a dangerous, defective product,
26 does the company know of any information that's contrary
27 to that conclusion?
28 MR. EATON: Assumes facts not in evidence,

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1 argumentative.
2 THE WITNESS: No, I don't know of any. I'm
3 sorry. Could you repeat that again. I'm sorry. Does
4 the company know of what?
5 (Record read.)
6 THE WITNESS: I'm sorry. Could I -- did you say
7 the State has or if the State has? That's what part that
8 got me.
9 BY MR. MCGUIRE:
10 Q. If the State, we'll say.
11 A. If the State has? So if the State has
12 determined that. Okay. I don't know that the State has
13 or hasn't. So --
14 Q. My question was if they have declared it, that
15 secondhand smoke is a dangerous, defective -- I'll call
16 it byproduct of cigarette smoking, does 7-Eleven,
17 Incorporated, have any information that is contrary to
18 that conclusion?
19 MR. EATON: Same objections, hypothetical.
20 THE WITNESS: I don't know.
21 BY MR. MCGUIRE:
22 Q. Has 7-Eleven, International, done any -- taken
23 any steps to educate itself on what secondhand smoke is
24 and what diseases it can cause in humans?
25 A. Not that I'm aware of.
26 Q. Has the company intentionally avoided learning
27 anything about secondhand smoke so as to avoid having to
28 do anything about it?

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1 MS. TUCKER: Objection, argumentative.
2 MR. EATON: Join.
3 THE WITNESS: Not that I'm aware of.
4 BY MR. MCGUIRE:
5 Q. Why doesn't 7-Eleven, Incorporated, take a
6 position on secondhand smoke?
7 MR. EATON: Calls for speculation, lacks
8 foundation.
9 MS. TUCKER: Well, I'm going to object.
10 THE WITNESS: I don't understand. I don't
11 understand.
12 MS. TUCKER: Excuse me.
13 MR. KAMMER: Somebody stop it. You got to wait.
14 MS. TUCKER: Excuse me. I'm going to object
15 that you're assuming a premise, and I still want to make
16 sure you're asking why the company hasn't done something
17 about something he doesn't even know if they've
18 considered. So I object to the form of the question.
19 MR. KAMMER: I object to the question because
20 it's beyond the scope of the topics and instruct the
21 witness not to answer.

22 BY MR. MCGUIRE:
23 Q. Do you know what environmental tobacco smoke is?
24 MR. EATON: Asked and answered.
25 THE WITNESS: Environmental tobacco smoke?
26 BY MR. MCGUIRE:
27 Q. Yes.
28 A. My assumption is it's secondhand smoke.

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1 Q. Okay. Have any employees of the company made
2 claims for Workman's Compensation benefits because of
3 exposure to secondhand smoke?
4 MR. EATON: Beyond the scope of the deposition
5 notice.
6 MR. KAMMER: I have the same objection as Mr.
7 Eaton and instruct the witness not to answer.
8 BY MR. MCGUIRE:
9 Q. Okay. Let's go to the deposition notice.
10 Notice of deposition. And -- okay. As I understand it,
11 you're here --
12 A. I'm sorry.
13 Q. Let me first show you this document which I
14 don't think is in that pile. But this is a notice of
15 deposition. Have you ever seen that before?
16 A. Can I look at the rest of it?
17 Q. Oh, sure. Tell you what, we'll take a break and
18 you can look at it.

19 (Recess taken.)
20 (Exhibits 4049 and 4052 were marked for
21 identification.)

22 BY MR. MCGUIRE:
23 Q. Exhibit 4049 for identification is a Notice of
24 Deposition that I asked you to look at during the break.
25 And Exhibit 4052, there's an intentional gap in these
26 numbers, is an Amended Notice. And your counsel and I
27 off the record had looked through these, and we believe
28 that the subject matters are the same or substantially

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1 the same. Have you seen any of these documents
2 beforehand?
3 A. No.
4 Q. Okay. Let's go through the -- you can keep one
5 in front of you. I have a document, has got my writing
6 all over it, which was a letter from Charles E. Houston
7 of the Gray, Cary Firm, technology's leading edge.
8 And --

9 MR. KAMMER: Legal edge, please.
10 MR. MCGUIRE: Oh, God, please. See, the legal
11 edge.

12 MR. KAMMER: If I don't protect my mark, I can
13 lose it.

14 BY MR. MCGUIRE:

15 Q. And it does say something there being a mark
16 there. It indicates here that you are here today as the
17 person most knowledgeable for 7-Eleven, Incorporated, on
18 Topics 1 through 7, 9 and 10 of the plaintiff's notice.
19 Since we have two notices, we've marked them both. But
20 we believe they say the same thing. So let me go through
21 the first one. Other than going through the documents
22 which were produced to me, and that's a separate item,
23 have you and I discussed this morning already all of the
24 advertising and promotion of tobacco products in the
25 state of California undertaken on behalf of 7-Eleven,
26 Incorporated?

27 MS. TUCKER: Objection; vague as to time.
28 THE WITNESS: In essence, I believe so, yes.

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1 BY MR. MCGUIRE:
2 Q. To expand a little bit about that, the types of
3 advertising that we've talked about, the generic types
4 that we've talked about, as far as you know, does that
5 pretty much encompass the type of advertising and
6 merchandising that has been done by 7-Eleven,
7 Incorporated, and its predecessor name, Southland
8 Corporation, has done regarding the sale of tobacco
9 products in the state of California?
10 A. By that you mean buy-downs, value-added offers,
11 et cetera? Yes.
12 Q. Yes. Okay. The next topic that you are
13 appearing here as a person most knowledgeable for the
14 company is communications regarding marketing, sales and
15 display of tobacco products and the risks associated with
16 the use of tobacco products at any of your outlets within
17 the State of California, including, but not limited to,
18 communications between the company and any tobacco
19 companies from November 1, 1998 to the present. We
20 haven't talked about all of that, have we, or have we, as
21 far as you know?
22 A. Communications, probably not. No.
23 Q. Okay. Let's dwell a little bit on that. What
24 type of communications do you have with tobacco
25 manufacturers or have you had since you took over your
26 position as category manager in January of 1997?
27 A. The method of communication or the --
28 Q. Yes.

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1 A. -- topics?
2 Q. Let's just say generic type of communications.
3 I'm assuming you had face-to-face communications?
4 A. Yes, we do.
5 Q. And I'm assuming there are contracts that are
6 exchanged between the two of you?
7 A. Right.
8 Q. Between the two companies?
9 A. Correct.
10 Q. Do you e-mail any of the tobacco manufacturer's
11 representatives?
12 A. Occasionally.
13 Q. Have you e-mailed them since December of 1998
14 regarding the sale of tobacco products?
15 A. Yes.
16 Q. In the state of California?
17 A. In the state of California. I can't say for
18 sure.
19 Q. Does each tobacco manufacturer have a different
20 individual contact that you contact regarding these
21 issues?
22 A. Yes.
23 Q. Okay. Let's work our way down. Who is your
24 primary contact or is your contact for Philip Morris?
25 A. Jamie, J-a-m-i-e, French, F-r-e-n-c-h.
26 Q. Where is -- is that a man or a woman?
27 A. That's a man.
28 Q. And where is his office?

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1 A. Plano, Texas. P-l-a-n-o.
2 Q. Plano Texas. Shell Oil, Polybutylene.

3 MR. EATON: A plaintiff's lawyer.
4 BY MR. MCGUIRE:
5 Q. U.S. Brass. I've been to Plano.
6 A. [DELETED]
7 Q. Really. And, also, it's also the site of Friday
8 Night Lights, big high school football in Plano, Texas,
9 right?
10 MR. KAMMER: I'm glad you're paying for this.
11 MR. MCGUIRE: Thank you.
12 BY MR. MCGUIRE:
13 Q. So we have Philip Morris, Jamie French out of
14 Plano, Texas?
15 A. Right.
16 Q. What about Reynolds?
17 A. R.J. Reynolds is Jeanne, J-e-a-n-n-e, Swisher,
18 S-w-i-s-h-e-r.
19 Q. Okay.
20 A. And, I'm sorry, I can't tell you what town she's
21 in. She just moved in the L.A. area.
22 Q. Brown & Williamson?
23 A. Brown & Williamson is John Grover,
24 G-r-o-v-e-r, in Louisville.
25 Q. Lorillard?
26 A. Very little, quite frankly, contact with
27 Lorillard since we do not have an agreement. But Ron
28 Regenschied, R-e-g-e-n-s-c-h-i-e-d, in Richardson, Texas.

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1 Q. Do you sell Lorillard products?
2 A. Yes.
3 Q. Are they paying for your attorneys in this case?
4 A. I'm sorry?
5 Q. Is Lorillard paying for your company's legal
6 expenses in this case?
7 MR. EATON: Lacks foundation.
8 THE WITNESS: I have no idea.
9 BY MR. MCGUIRE:
10 Q. And Liggett group?
11 A. I really have no contact with them, to speak of.
12 Q. Do you sell Lorillard products?
13 A. Lorillard products, yes.
14 Q. Do you sell Liggett products?
15 A. A couple.
16 Q. What products do you sell of Liggetts?
17 A. Eve. Oh, gosh. Yeah, it's Eve. I think that's
18 the only brand in some parts of the country. I think
19 that's it.
20 Q. And what products do you sell of Lorillard's?
21 A. Newports are the key brand. That's most of the
22 business is Newport.
23 Q. Brown & Williamson?
24 A. Camel. Winston, Dorals are the key brands.
25 Q. Camel, Winston and Doral. Are they Brown &
26 Williamson or Reynolds?
27 A. I'm sorry. Did I say -- I'm sorry. Did you say
28 Brown & Williamson?

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1 Q. Yeah.
2 A. I'm sorry. Excuse me. Brown & Williamson is
3 Kools, Lucky's, GPC's. Now, there are many other smaller
4 brands with all these companies.
5 Q. Okay. You just give me the ones that come to
6 mind --
7 A. Okay.

8 Q. -- is that right?
9 A. Yes, sir.
10 Q. I guess Reynolds is Camel, Winston, Doral?
11 A. Camel, Winston, Doral.
12 Q. And Philip Morris? Do you carry all of their
13 brands?
14 A. No.
15 Q. Okay. What do you carry?
16 A. Marlboros, Virginia Slims, Parliaments, Basics,
17 Merits. And then the rest of the brands we might carry
18 on an area-by-area basis.
19 Q. Do you do market research to determine which
20 brands should be stocked in which stores, or do you rely
21 on the tobacco companies to tell you what their
22 information is showing?
23 A. We don't do any of our own market research. We
24 use sales data and industry data.
25 Q. When you say you don't do your own market
26 research, you use sales and industry data, is sales data
27 something that comes from the sales of both franchised
28 and company-owned stores?

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1 A. That's correct.
2 Q. And the industry data is data that is presented
3 to you by any one of these individuals?
4 A. Or possibly wholesalers.
5 Q. Who do you deal with from a wholesale level?
6 A. Mclane Company is our nationally recommended
7 wholesaler for cigarettes.
8 Q. Do they carry all of the above brands that we --
9 A. Yes.
10 Q. -- talked about? And what type of arrangement
11 do you have with Mclane?
12 A. We have a master agreement with Mclanes for a
13 number of products servicing all our stores, if the store
14 likes to purchase from them.
15 Q. Does Mclane also, in their agreement with you,
16 address marketing point of sales displays?
17 A. No.
18 Q. Any of the things that we talked about this
19 morning the first hour and a half of your deposition?
20 A. No.
21 Q. What, if any, marketing or promotional issues
22 are addressed in the agreement between Mclane and
23 Southland -- excuse me -- 7-Eleven?
24 A. I can only speak for the cigarette category part
25 of it.
26 Q. Obviously.
27 A. There are none.
28 Q. So, is that right, we want so many cartons

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1 and --
2 A. They are basically -- they're just our
3 distributor. That's all.
4 Q. When you do your market research, what is the
5 unit that you refer to? Is it cigarettes, packs or
6 cartons, in other words?
7 A. We use both packs and cartons.
8 Q. Does the industry material use both packs and
9 cartons?
10 MR. EATON: Calls for speculation.
11 THE WITNESS: Generally, cartons. What I've
12 seen is generally, cartons.

13 MR. KAMMER: You need to wait until objections
14 are finished before you answer.

15 THE WITNESS: I'm sorry.

16 BY MR. MCGUIRE:

17 Q. Is there an outfit called Stars that produces
18 marketing data for the cigarette manufacturers that you
19 have access to?

20 A. I believe there is a Star system. But I don't
21 have access to it.

22 Q. Okay. In addition to face-to-face contracts,
23 e-mail, what other types, generic types of communication,
24 do you have with the manufacturing industry?
25 Correspondence?

26 A. Yes.

27 Q. Telephone calls?

28 A. Yes.

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1 Q. Anything else?

2 A. No.

3 Q. Video conferencing?

4 A. Don't think I've ever had a video conference
5 with a cigarette -- or tobacco company.

6 Q. All right. How frequently do you have
7 face-to-face correspondence with the manufacturers? And
8 I guess it's easier if I say let's work our way down
9 between the various manufacturers. Would that be an
10 easier way to answer this?

11 A. Sure.

12 Q. How frequently have you talked with Jamie French
13 in the last year?

14 A. I would imagine about three times a week.

15 Q. And what's the subject matter of those
16 conversations, generally?

17 A. Promotional activity. Probably they mostly
18 revolve around promotional activity or new item
19 introductions, et cetera, things of that nature.

20 Q. Let's take those two words or two areas. When
21 you say promotional activity, what do you mean?

22 A. Buy-down scheduling, buy-down amounts.

23 Q. Are the buy-downs, either the scheduling or the
24 amounts, something that is dealt with or addressed in the
25 RDA agreements?

26 A. Not the specifics.

27 Q. Are you obligated to participate in the
28 buy-downs if you sign on the RDA agreements?

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1 A. We are obligated to participate in corporate
2 stores and to recommend them to franchisees, recommend
3 participation to franchisees.

4 Q. Are there different levels of participation in
5 the buy-downs?

6 A. There are some differences in numbers of weeks
7 and buy-down amounts at certain levels of the Philip
8 Morris Leaders Program.

9 Q. Okay. Philip Morris has a program that
10 encompasses RDA agreement that's called the Leaders
11 Program; is that right?

12 A. That's correct.

13 Q. What was it called before it was called the
14 Leaders Program, if you know?

15 A. Masters.

16 Q. And, basically, is the leaders program a
17 methodology -- method where you agree the company agrees

18 to receive discounts or money back, based on schedules
19 prepared by the manufacturers, whose object is to
20 increase the sale of cigarettes?
21 MR. EATON: Objection as to the last part.
22 Calls for speculation.
23 THE WITNESS: We receive funding for buy-downs
24 that is passed on to consumers, as well as display
25 allowance monies. And, you know, I guess it's kind of
26 their reasons why they do this.
27 BY MR. MCGUIRE:
28 Q. What do you mean their reasons why they do that?
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1 A. I can't tell you why -- what their intent is.
2 Q. What's your intent?
3 A. My intent?
4 Q. The company's intent.
5 A. My company's intent in what? The participating?
6 Q. Participating.
7 A. Okay. My company's intent.
8 MS. TUCKER: I'm sorry. Can we have the
9 question clarified in case one day this question is
10 pulled out? So the question to the witness is, what is
11 7-Eleven's intent in entering into a P.M. -- Philip
12 Morris Leaders Program RDA agreement?
13 MR. MCGUIRE: Yes.
14 THE WITNESS: To maximize profits in the
15 category.
16 BY MR. MCGUIRE:
17 Q. Do profits increase with the sale of number of
18 packs sold?
19 A. Yes. But they also increase based on display
20 allowance.
21 Q. What I'm having difficulty understanding is that
22 if you enter into an agreement regarding promotional
23 activities on a multi-year basis, which is what I
24 understood is what normally happens. Am I correct so
25 far?
26 A. Yes.
27 Q. Why you would be talking three times a week
28 about that if it's already a done deal. Can you explain
72
1 how that happens or why that happens?
2 A. The programs don't detail timing amounts,
3 duration necessarily. And they also don't detail the
4 value-added offers. There's just a general agreement to
5 participate in these types of events.
6 Q. Is promotional activity, as you've discussed it
7 and you've explained to me, the subject matter of not
8 only face-to-face and telephone conversations, but also
9 e-mail and correspondence?
10 A. Yes.
11 Q. Okay. And then the other item that you discuss
12 with, at least, Jamie French is new items. What do you
13 mean by new items?
14 A. New brand introductions. Line extensions.
15 Q. What's a line extension?
16 A. A light version of an existing brand, for
17 example, or a hard pack version.
18 Q. When you say "light version," what does that
19 mean?
20 A. A Marlboro Light, as opposed to a full flavored,
21 if you will, cigarette.
22 Q. What's the difference, as you understand it,

23 between a Marlboro Light and a full flavored Marlboro?
24 MR. EATON: Calls for speculation, beyond the
25 scope of the deposition notice.
26 THE WITNESS: A less -- a less aromatic smoke, I
27 guess might be the best definition.
28 ////

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1 BY MR. MCGUIRE:
2 Q. What's aromatic smoke?
3 MR. KAMMER: Now, I'll object because it's
4 beyond the scope of the deposition and instruct the
5 witness not to answer.
6 MR. MCGUIRE: He's just explaining his answer,
7 Bill.
8 MR. KAMMER: Same objection.
9 BY MR. MCGUIRE:
10 Q. When you used "aromatic smoke" in your answer to
11 the previous question that wasn't objected to, what did
12 you mean?
13 MR. KAMMER: Same objection, same instruction.
14 BY MR. MCGUIRE:
15 Q. Is a Marlboro Light less dangerous than regular
16 Marlboro?
17 MR. KAMMER: Objection; instruct the witness not
18 to answer. I let you ask the first one because I thought
19 we were going somewhere, but we're not going anywhere
20 now.
21 BY MR. MCGUIRE:
22 Q. Have you ever discussed the difference between a
23 Marlboro Light and a full flavored Marlboro, as you
24 described it, with Jamie French?
25 MR. KAMMER: Same objection; beyond the scope of
26 the deposition.
27 BY MR. MCGUIRE:
28 Q. Have you ever discussed the fact that the public

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1 should be warned that Marlboro Lights are not less
2 dangerous than full flavored Marlboros?
3 MR. EATON: Assumes facts not in evidence.
4 THE WITNESS: No. I'm sorry. I'm not sure I
5 made the -- would you repeat the question again?
6 BY MR. MCGUIRE:
7 Q. Have you ever discussed with Jamie French that
8 Marlboro -- whether or not the public should be warned
9 that Marlboro Lights are not less dangerous than full
10 flavored Marlboros?
11 MR. EATON: Same objection.
12 THE WITNESS: Can we go off record for a minute?
13 MR. KAMMER: Sure. Let's go outside.
14 THE WITNESS: No. Can I --
15 MR. KAMMER: You can go off the record, but you
16 can't go off the record and talk without the attorneys
17 agreeing and the court reporter stopping.
18 THE WITNESS: Well, I can't answer that question
19 because it seems to me there's an assumption in there
20 that I haven't agreed to.
21 MR. EATON: Hence my objection.
22 MR. KAMMER: I trained him well.
23 BY MR. MCGUIRE:
24 Q. The assumption is what, sir?
25 A. That they're less dangerous.
26 Q. And do you have any information that they're
27 not?

28 A. Do I have any information that they're not -- 75

1 Q. Yes.

2 A. -- less dangerous?

3 Q. Yes.

4 A. No.

5 Q. When you advertise a light version of a line
6 extension, what message are you intending to communicate
7 to your customers?

8 MR. EATON: Assumes facts not in evidence.

9 MS. TUCKER: Lacks foundation.

10 THE WITNESS: I guess that it's a lighter
11 tasting cigarette.

12 BY MR. MCGUIRE:

13 Q. Do you believe that?

14 MR. KAMMER: Objection; he's not here to talk
15 about his personal beliefs. I'll instruct the witness
16 not to answer.

17 BY MR. MCGUIRE:

18 Q. Does the company do any research as to whether
19 or not the light cigarette merely just tastes different
20 than the full flavored version, and not anything else
21 different from it?

22 A. By "the company," you mean 7-Eleven?

23 Q. Yeah.

24 A. No.

25 Q. Have you ever spoken to Jamie French about
26 secondhand smoke?

27 A. No.

28 Q. Have you ever talked to any of the 76

1 manufacturers' representatives about secondhand smoke?

2 A. Not to my knowledge.

3 Q. Have you talked to any of the manufacturers
4 regarding this lawsuit?

5 A. No.

6 Q. Have you talked to anybody regarding your
7 appearance as a witness in this case?

8 A. People within my company, yes. My boss.

9 Q. Who?

10 A. Jeff Hamill.

11 Q. Hamill?

12 A. H-a-m-i-l-l.

13 Q. Okay. Anyone else?

14 A. My assistant. I mean basically telling people
15 where I was going to be.

16 Q. Anything else?

17 A. No.

18 Q. What do you know about this suit? And, again,
19 let me, just before -- you're represented by counsel, and
20 it would not be appropriate for you to provide me any
21 information that you received solely from conversations,
22 if you've had them, with your attorneys or any one of
23 them. So eliminating that area from your response, do
24 you know anything about this lawsuit?

25 A. No.

26 MR. KAMMER: Let me object. Oh, I was going to
27 say don't forget Frank.

28 MR. MCGUIRE: Don't forget who? 77

1 MR. KAMMER: House counsel.

2 THE WITNESS: House counsel.

3 MR. KAMMER: I don't think he meant to trick

4 you.
5 BY MR. MCGUIRE:
6 Q. Have you read any articles about environmental
7 tobacco smoke?
8 A. None that comes to mind, no.
9 Q. Has anyone in the company ever read any articles
10 about environmental tobacco smoke?
11 MR. EATON: Calls for speculation.
12 THE WITNESS: I wouldn't know.
13 BY MR. MCGUIRE:
14 Q. Was any research done by you to determine
15 whether there was somebody in the company that might know
16 more than you about secondhand smoke before you appeared
17 today to represent the company and it's stated knowledge
18 regarding secondhand smoke?
19 A. There's no one else.
20 Q. What do you mean there's no one else?
21 A. I guess I'm appearing as the person that would
22 be most likely to know that. And I don't know that. So,
23 therefore, I'm saying --
24 Q. Okay. But, again, we don't want you to guess.
25 Why are you appearing here today? Were you selected to
26 talk about environmental tobacco smoke if you don't know
27 anything about it?
28 MR. EATON: That's argumentative.

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1 MS. TUCKER: And potentially calls for
2 attorney-client privileged communication.
3 MR. KAMMER: I'm going to object to the question
4 primarily because it also goes to work product. He's
5 here and you're entitled to question him about the
6 topics, but not to process why he's here.
7 MR. MCGUIRE: I think I can question him about
8 the topic as to whether he truly is the person most
9 knowledgeable or not.
10 MR. KAMMER: Then you should lay that
11 foundation.
12 MR. MCGUIRE: That's what I did. And that's
13 what I'm trying to do.
14 MR. KAMMER: No. The suggestion is that if he
15 knows nothing, someone else must know something. The
16 answer is, he doesn't know anything. He's been nominated
17 by the company to testify and that's his testimony.
18 Period.
19 BY MR. MCGUIRE:
20 Q. Do you know what process was followed or
21 implemented in order to determine who knew the most about
22 environmental tobacco smoke?
23 A. Do I know the process?
24 Q. Yeah. Without, again, going into anything that
25 involves your attorney's work, including in-house
26 counsel.
27 A. No.
28 Q. Are you a smoker?

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1 A. No.
2 Q. Have you ever been?
3 A. Yes.
4 Q. When did you give it up?
5 A. I believe it was 1993.
6 Q. Does the 7-Eleven, Incorporated, agree that
7 smoking is addictive?
8 MR. EATON: Objection as to the word "agree."

9 Calls for an expert opinion, even if the corporation had
10 such a position.
11 THE WITNESS: I don't know.
12 BY MR. MCGUIRE:
13 Q. Who would know that?
14 MR. EATON: Assumes facts.
15 THE WITNESS: I don't know who would know that.
16 BY MR. KAMMER:
17 Q. Have you had any discussions -- I think I asked
18 this, but let me make sure I did. I think I asked you
19 whether you've had any discussions regarding secondhand
20 smoke with any of the various representatives, and I
21 think your answer was no.
22 A. That's correct.
23 Q. And is your method of communicating with all of
24 the other representatives the same? It involves
25 face-to-face contracts, e-mail, correspondence, and
26 telephone calls?
27 A. Yes.
28 Q. And is the subjects covered in your

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1 communication with the tobacco industries the same, in
2 that it involved promotional activities or new items?
3 A. Yes. There are certain other elements, such as,
4 maybe restrictions on merchandising from a state-to-state
5 basis, things like that.
6 Q. Okay. Who initiates -- let's concentrate on
7 just the restriction type thing. Who have you talked
8 with regarding restrictions on the sale of cigarette
9 items of the five that you identified?
10 A. Probably all but Lorillard.
11 Q. Was California the subject of any of those
12 conversations?
13 A. I don't believe so.
14 Q. Was Missouri the subject of any of those
15 conversations?
16 A. No.
17 Q. What states -- what restrictions were you -- do
18 you have in mind that you discussed with them?
19 A. Well, currently New York state has a restriction
20 on buy-downs. That would have been a topic of discussion
21 we had.
22 Q. So when you were talking about restrictions, you
23 meant restrictions in the way you merchandise or market?
24 A. Correct.
25 Q. By "you," I mean you and the companies together.
26 A. Correct.
27 Q. Any other states have restrictions on buy-downs
28 that you're aware of?

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1 A. None that we operate in have restrictions.
2 Although, there are certain unique signage or
3 disclosure-type information that is required in certain
4 states, such as the fact that it's the buy-down is funded
5 by a manufacturer must appear on signage in certain
6 states.
7 Q. Anything else?
8 A. No. That's basically the types of disclosure
9 information, such as irregular price, as opposed to what
10 is being offered --
11 THE REPORTER: Is being offered what?
12 THE WITNESS: Certain states, like Maryland,
13 require you to tell the consumer what your regular price

14 is, what the buy-down amount is and what net is. In most
15 states you can just post the buy-down price, if you will.
16 BY MR. MCGUIRE:

17 Q. What type of restrictions is there in New York
18 state on buy-downs?

19 MR. KAMMER: I'm going to object to the scope of
20 the question. All of the categories of the deposition
21 notice have to do with sales and marketing in California,
22 and I'm not going to hold this witness here today and
23 discuss state by state of the operations of the company.

24 MR. MCGUIRE: Bill, you know this may be exactly
25 what should be done in California. I'm not belaboring
26 this point. This is relevant. I would appreciate your
27 allowing him to go a little bit further before you give
28 him another instruction not to answer it because this

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1 one, you know, is only going to bring him back.

2 MR. KAMMER: You're going to renote his
3 deposition to discuss marketing activities in New York?

4 MR. MCGUIRE: Well, buy-down restrictions on
5 buy-down agreements, because I think that's a great
6 remedy for the problem we have here.

7 MR. KAMMER: I'll leave that to your experts.
8 I'm going to instruct the witness not to answer.

9 BY MR. MCGUIRE:

10 Q. Have you ever discussed restrictions or buy-down
11 restrictions with any of these individuals as they might
12 relate to other states, including California?

13 A. No. Other than the kind of signage, I guess I
14 call that kind of the detail stuff.

15 Q. Category Number 3 is not limited to California,
16 Bill. I interpret this restriction as being a warning.
17 So I'm going to ask, again, does -- for foundational
18 purposes, does this restriction on buy-downs in New York
19 state relate to a warning that is given to smokers in New
20 York that the buy-down is being funded by the tobacco
21 industry?

22 MR. EATON: Calls for speculation.

23 MR. KAMMER: Same objection, same instruction
24 not to answer. Category 3, unless you've got a different
25 category, is all warnings regarding environmental tobacco
26 smoke sales and marketing activities in the nature of
27 buy-downs. It has nothing to do with warnings of the
28 environmental tobacco smoke.

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1 BY MR. MCGUIRE:

2 Q. Is the dangers associated -- or are the dangers
3 associated with the environmental tobacco smoke the
4 foundation for the New York state restriction on
5 buy-downs?

6 MR. EATON: Calls for speculation as to what the
7 legislature had in mind.

8 MR. KAMMER: Same instruction.

9 MR. MCGUIRE: When did this restriction -- well,
10 let's just get this -- you're not going to let him answer
11 any questions on the New York state restriction on
12 buy-downs and whether it's based on warnings or not; is
13 that true?

14 MR. KAMMER: That's correct.

15 BY MR. MCGUIRE:

16 Q. Okay. Has 7-Eleven Corporation ever warned any
17 of its customers of dangers associated with secondhand
18 smoke?

19 A. Not that I'm aware of.
20 Q. Has the subject of whether or not customers
21 should be warned of secondhand smoke been discussed to
22 your knowledge?
23 A. No.
24 Q. If, in fact, such discussions went on, is it
25 probable that you would have been involved in such
26 discussions, based on your position with the company?
27 A. Probably.
28 Q. Have you discussed warnings regarding secondhand

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1 smoke with any of the cigarette manufacturer
2 representatives?
3 A. No.
4 Q. Have you disseminated any information since
5 November 1, 1998 regarding the relationship between
6 cancer, heart disease, respiratory illness and
7 retardation of fetal and post natal growth and exposure
8 to environmental tobacco smoke or secondhand smoke?
9 MR. EATON: Assumes facts. Argumentative.
10 THE WITNESS: No.
11 BY MR. MCGUIRE:
12 Q. Are you allowed to smoke in any of your stores?
13 A. I don't know.
14 Q. Are you allowed to smoke in any of your
15 California stores?
16 A. I don't know.
17 Q. Are you allowed to smoke in any franchised
18 stores?
19 A. I don't know.
20 Q. Is there anyone that would know more about that
21 subject matter than you do that is presently employed by
22 7-Eleven Corporation?
23 A. It would probably have to be local management.
24 Q. Who are you thinking of?
25 A. A market manager or a division manager.
26 Q. Okay. Tell me a little bit more. What do you
27 mean by market manager? Southern California? Is that
28 what you mean by market?

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1 A. We have nine divisions in the company.
2 Geographic divisions, if you will.
3 Q. Uh-huh.
4 A. California is in two of those. Northern
5 California is one. Southern California is another.
6 Q. Who is the Southern California manager?
7 A. The division manager?
8 Q. Yes, sir.
9 A. Division manager is Cindy, C-i-n-d-y, Davis,
10 D-a-v-i-s.
11 Q. And Northern California?
12 A. Frank Ganbina, G-a-n-b-i-n-a.
13 Q. Do you know how long each of these individuals
14 have been in their jobs?
15 A. Cindy's been there about two weeks. Frank's
16 been there, I'm going to say, at least two years.
17 Q. And who was Cindy's predecessor?
18 A. Jeff Hamill, who just is now my boss in Dallas.
19 Q. Where is Cindy's office?
20 A. La Brea.
21 Q. And Mr. Ganbina's?
22 A. Las Vegas.
23 Q. One of the areas that is included in the notice

24 is the business relationship, if any, between Southland
25 and each of the tobacco companies, that are defendants in
26 this action, including all information concerning the
27 business or agency relationship of such -- between
28 7-Eleven and such companies. This goes back to our -- my

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1 original question about who's paying for your attorney's
2 services in this case.

3 Are you aware of any type of indemnity agreement
4 between tobacco manufacturers and 7-Eleven Corporation,
5 whether that indemnity is limited to legal fees and
6 costs, or ultimate judgments, or ramifications of a
7 judgment against the company?

8 A. I have no knowledge of that.

9 Q. Who would be the person that would most likely
10 know, categorically, whether there is such an arrangement
11 or agreement?

12 A. I'm -- my assumption would be our legal
13 department.

14 MR. MCGUIRE: Okay. Off the record just a
15 second.

16 (Discussion off the record.)

17 BY MR. MCGUIRE:

18 Q. Did you sign a declaration or a verification of
19 written discovery indicating that the answers were true
20 and correct to the best of your knowledge?

21 A. I signed one document. I'm not sure which one
22 you're referring to, though. It was a document similar
23 to the one you showed me, but not the same one.

24 Q. And I assume that 7-Eleven Corporation -- let me
25 ask it this way. Does 7-Eleven Corporation have any
26 research at all regarding environmental tobacco smoke or
27 secondhand smoke and its effect on humans?

28 A. Not that I'm aware of, no.

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1 Q. Is there anyone in the company that would have
2 more knowledge or information on that subject than you?

3 A. No.

4 Q. How do you know that?

5 A. Well --

6 Q. Did you ask?

7 A. No.

8 Q. What do you know about secondhand smoke and the
9 relationship to disease?

10 MR. EATON: Assumes a fact.

11 THE WITNESS: Probably nothing other than what I
12 may have read in the newspaper and I hear everybody else
13 -- you know, possibility there's some connection. I have
14 no particular special knowledge.

15 BY MR. MCGUIRE:

16 Q. I want to know about any knowledge, not
17 particular or special. So what do you know about the
18 relationship between ETS, environmental tobacco smoke, or
19 secondhand smoke?

20 MS. TUCKER: Other than what he just testified
21 to?

22 MR. MCGUIRE: As soon as I finish the question.

23 MS. TUCKER: I'm sorry. It's hard to get it in
24 because everyone's running all over each other. So I
25 apologize.

26 BY MR. MCGUIRE:

27 Q. What do you know about the relationship between
28 environmental tobacco smoke or secondhand smoke and any

1 diseases that can be caused in humans?
 2 A. Nothing specific.
 3 Q. What do you know in general?
 4 A. All I know is there supposedly is a possibility
 5 there's a linkage.
 6 Q. Okay. Who told you that supposedly or possibly
 7 there's a linkage?
 8 A. I'm not sure anybody told me that. I think I
 9 just somehow gained that through newspapers or whatever.
 10 Q. Is that the extent of 7-Eleven's knowledge of
 11 the relationship between secondhand smoke and disease in
 12 humans, as far as you know?
 13 A. As far as I know, yes.
 14 Q. Does 7-Eleven have a code of ethics?
 15 A. We have a -- we have a code of business conduct.
 16 Q. Okay. Can you recite that to me.
 17 A. No.
 18 Q. Is that too long?
 19 A. Well, I don't think I remember exactly how it's
 20 worded. But I can probably tell you the gist of it, if
 21 you will.
 22 Q. That would be fine. Since you can't tell me
 23 exactly, just tell me what you can do.
 24 A. It's basically dealings with the manufacturers
 25 in terms of gratuities, your being honest in your
 26 dealings with your suppliers, the fact that you can't
 27 have any interest in the company you do business with.
 28 Those types of code of conduct.

1 Q. Is there a code of conduct that relates to how
 2 you should treat the customer?
 3 A. No. I don't think there's a formal code of
 4 conduct, no. Other than to provide courteous service.
 5 Q. If it wasn't against the law, would you sell a
 6 pack of cigarettes to a minor?
 7 MR. EATON: Calls for speculation, incomplete
 8 hypothetical.
 9 MS. TUCKER: Lacks foundation.
 10 THE WITNESS: I can't answer a question that
 11 doesn't seem to make much sense to me.
 12 BY MR. MCGUIRE:
 13 Q. Okay. That's 4049. Let me see what discovery I
 14 have to see whether you signed any of it.
 15 MR. KAMMER: Can we go off the record.
 16 MR. MCGUIRE: I have it right here.
 17 MR. KAMMER: The answer is none. But I think
 18 what you're trying to say -- we went through them
 19 yesterday. We didn't sign any of them.
 20 BY MR. MCGUIRE:
 21 Q. Okay. Do you know what representations were
 22 made under penalty of perjury in response to written
 23 discovery? If you didn't sign the verifications, have
 24 you reviewed them in detail?
 25 A. No.
 26 Q. Okay. One of the areas that I understood from
 27 Mr. Boggs's letter of June 7th was that you were here to
 28 answer under oath questions regarding the company's

1 responses to written interrogatories or written
 2 discovery. Are you prepared to do that?
 3 A. Yes.
 4 Q. What preparation did you do in that regard?

5 A. I'm sorry. I am -- I don't know how to respond
6 to that. I don't know what that means.
7 Q. How did you prepare yourself to answer those
8 questions?
9 A. Questions on what?
10 Q. On written discovery responses.
11 A. The only thing we did was reviewed the documents
12 that were submitted to see if I was familiar with them so
13 that I could be able to respond to questions about them.
14 Q. And you weren't familiar with them?
15 A. Excuse me?
16 Q. And you were not familiar with them?
17 A. I'm a little confused here. I'm familiar with
18 basically what's in this stack. Is that what you're
19 talking about?
20 Q. No.
21 A. No. Okay.
22 Q. I'm talking about a set of documents. I'm
23 talking about defendant's, Southland Corporation's
24 response to plaintiff, American Environmental Safety
25 Institute's, first set of request for admonitions which
26 were signed or verified by Beverly R. Lopez. Do you know
27 anything about that?
28 A. No. Other than I was told that there were, and

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1 asked if I had seen them, and I said no, I hadn't.
2 Q. Okay. And I'm also talking about defendant's,
3 Southland Corporation's, written response to plaintiff,
4 American Environmental Safety Institute's, first set of
5 demands for inspection of documents to defendants signed
6 by Beverly R. Lopez.
7 A. I saw that yesterday for the first time.
8 Q. And --
9 A. I have not read through it.
10 Q. Do you have any knowledge or information
11 regarding the -- how the document or the response was
12 prepared?
13 A. I may have.
14 Q. Do you know more than Beverly Lopez?
15 A. Well, I'm really getting confused here. If this
16 was a request for documents, I may know about the request
17 for documents and where they came from. But I'm not sure
18 what -- I'm not sure what documents we're talking about.
19 Q. Okay. And there's also a document called
20 Defendants, the Southland Corporation's, Responses To
21 Plaintiff, American Environmental Safety Institute's,
22 first set of form interrogatories. And that is also
23 signed by Beverly R. Lopez. Have you reviewed that
24 document?
25 A. I have looked at it. But I have not reviewed it
26 in detail.
27 Q. Okay.
28 A. Yesterday for the first time.

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1 Q. Okay. Did you review it before you left the
2 company so as to --
3 A. No.
4 Q. -- be prepared to answer questions about the
5 responses --
6 A. No.
7 Q. -- that are here and the basis of those
8 responses?
9 A. No.

10 Q. Okay. Has 7-Eleven, Incorporated, or its
11 predecessor company ever been sued in a case involving
12 claims of injury caused by exposure to smoking or
13 secondhand smoke?
14 A. Not that I'm aware of.
15 Q. Have you ever been provided any information from
16 the manufacturers regarding their relationship between
17 either smoking or secondhand smoke and disease in humans?
18 A. No.
19 Q. Have you ever discussed the relationship between
20 smoking as opposed to secondhand smoke and disease in
21 humans with any of the representatives of the tobacco
22 industry that you have had a chance to come in contact
23 with?
24 A. No.
25 Q. Do you have periodic conventions, your company
26 have periodic conventions with -- let's leave it at that,
27 periodic conventions or meetings?
28 A. Yes.

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1 Q. Where? Who participates in it?
2 A. The store managers and franchisees.
3 Q. How often are the meetings held?
4 A. We have a number of them during the year. But
5 they're geographical. So, basically, they would be one
6 that a franchisees or a manager would attend during the
7 year.
8 Q. So you move them around to different regions?
9 A. Right.
10 Q. How many total of them are a year?
11 A. This year there are nine.
12 Q. And are these only for the company employees and
13 management itself?
14 A. Except for some suppliers who may be sampling
15 new products, food service products.
16 Q. Has the tobacco industry ever made any
17 presentations at any of your conventions or sales
18 meetings?
19 A. No.
20 Q. Has the company made presentations based on
21 information they received from the tobacco industry?
22 A. No.
23 Q. Has the tobacco industry ever participated in
24 any way in presenting information regarding new products
25 with management beyond your level?
26 A. If the question is have -- have people from
27 companies made presentations about products to myself
28 and/or upper management from time to time.

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1 Q. I want to leave out you because I know they have
2 to you.
3 A. Okay.
4 Q. Okay. In other words, have the tobacco industry
5 made presentations to senior management at 7-Eleven?
6 A. Without my presence?
7 Q. Yes.
8 A. On products?
9 Q. Yes.
10 A. Not to my knowledge.
11 Q. Same question on the -- not on products, but on
12 lawsuits and injuries.
13 A. I wouldn't know.
14 Q. Is there a corporation officer who is charged

15 with government -- with being involved with governmental
16 affairs?

17 A. Not a corporate officer. We have a government
18 affairs department. But the head is not a corporate
19 officer.

20 Q. Does the government affairs -- what does the
21 government affairs department do?

22 A. They're basically involved with any regular --
23 any regulations regarding any retail sales of anything in
24 our stores.

25 Q. Are they involved with the regulation of tobacco
26 sales?

27 A. Yes.

28 Q. Who's the head of that department?

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1 A. His name is Ron Volkening, V-o-l-k-e-n-i-n-g.

2 Q. Where is he located?

3 A. In Dallas.

4 Q. Does Mr. Volkening know anything about
5 regulations in the state of California that restrict or
6 limit the type of sales or marketing that can be
7 conducted with respect to the sale of cigarette products?

8 A. I imagine so, yeah.

9 Q. Did you speak with him regarding your coming
10 here to give deposition testimony on the issues in this
11 case?

12 A. No.

13 Q. Can you tell me what organization of the company
14 -- I don't know if this is one of your areas or not. I
15 should check that.

16 Do you know, Bill?

17 MR. KAMMER: I don't think it is. But hold on.

18 MR. EATON: I didn't hear the whole question. I
19 thought I --

20 MR. KAMMER: I started to ask if you could talk
21 to me about the organization of the company and then he
22 asked me if we had designated.

23 MS. TUCKER: I think on the notice or letter it
24 said something about not including corporate structure.

25 MR. KAMMER: And I have a blank in my matrix
26 which is only typical human work product, which would be
27 wrong. This is a question about whether you were
28 nominated for every category of the notice.

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1 MR. EATON: That's clearly -- clearly that's not
2 true. He hasn't been nominated for everything.

3 MR. KAMMER: I was just explaining to him what I
4 was looking at. And so what Mickey is asking you -- in
5 fact, I think when you read the thing, you said Numbers 1
6 through 7 and 9 and 10.

7 MR. MCGUIRE: That's exactly what I said.

8 MR. KAMMER: And that's 8. Isn't that 8?

9 MS. TUCKER: This is the letter that says he's
10 here on all issues except the Website corporate structure
11 and --

12 MR. KAMMER: That's the same thing.

13 MS. TUCKER: -- pharmacy. So whatever.

14 MR. KAMMER: He could be here on pharmacy. If
15 you want to ask him if he has pharmacies, he knows as
16 much about that as probably anyone else.

17 BY MR. MCGUIRE:

18 Q. Do you sell any drugs in 7-Eleven stores?

19 A. Over-the-counter drugs.

20 Q. Yeah.
21 A. Yeah.
22 Q. Do you sell stop-smoking aides?
23 A. I don't believe so.
24 Q. No Nicoderm or patches?
25 A. No. I don't think so, no.
26 Q. Does 7-Eleven have a corporate logo or theme?
27 A. We have, I guess. Our most well-known one is,
28 Oh thank heaven for 7-Eleven.

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1 Q. That appears on your company correspondence?
2 A. No, not generally.
3 Q. Memorandum?
4 A. Sometimes.
5 Q. Okay. What documents did you review in
6 preparation for giving testimony?
7 A. Basically the one -- that stack.
8 Q. The stack that was copied at the beginning of
9 this deposition that you recognize this as being what you
10 went through?
11 A. Uh-huh.
12 Q. Is there anything that you reviewed that is not
13 in this stack?
14 A. No, I don't think so.
15 Q. Okay. There's one right there. Oh thank
16 heaven.
17 A. Okay. Yeah, it does say -- sometimes it does
18 and sometimes -- on a formal letterhead it wouldn't
19 appear on there. Excuse me.
20 MR. KAMMER: That's okay. Get to shuffling
21 things around, and I was tidying up your work space.
22 MR. MCGUIRE: How do you want to do these, Bill?
23 Do you want to put these on?
24 MR. KAMMER: Yeah.
25 MR. MCGUIRE: 4053.
26 MR. KAMMER: I have two.
27 (Whereupon, the following testimony is deemed
28 confidential material and subject to protective order

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1 entered by the Superior Court of the County of Los
2 Angeles, State of California and is bound separately.)
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1 (Whereupon, this ends the testimony deemed
2 confidential and subject to protective order entered by
3 the Superior Court of the County of Los Angeles, State of
4 California.)
5 MR. MCGUIRE: Sorry, Bill. It's took me so
6 long. And sorry to you and everybody else who's hungry.
7 MR. KAMMER: Break time. Off the record.
8 (Whereupon, the lunch recess was taken at 12:25
9 p.m.)
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1 SAN DIEGO, CALIFORNIA; THURSDAY, JUNE 8, 2000; 1:15 P.M.
2
3 FURTHER EXAMINATION BY MR. MCGUIRE:
4 Q. Do 7-Eleven stores sell cigarettes individually?
5 A. No.
6 Q. Have they ever done that?
7 A. I believe some of our franchisees have in the
8 past.
9 Q. When you say in the past, how far in the past?
10 A. Maybe three, four years ago.
11 Q. Do the franchisees know that that is not
12 something that the corporation approves of?
13 A. Yes.
14 Q. How do they know that?
15 A. I know I've communicated that a couple of times
16 through the divisions.
17 Q. Are there any other practices like -- why is
18 there a concern about selling cigarettes individually?
19 A. Well, some states have already regulated against
20 it. Don't think it's good practice for us to be in.
21 Q. Why?
22 A. There's -- we've had people complain that it's a
23 practice that's trying to get -- keep cigarettes cheap
24 enough for kids to buy it.
25 Q. So it's principally a practice that is not
26 approved because it would make it easier for minors to
27 purchase them; is that fair somewhat?
28 A. I think there is some public sentiment to that,

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1 yes.
2 Q. Are there any other types of practices,
3 retailing or marketing or selling practices that you're
4 aware of that are similarly discouraged by the
5 corporation with respect to company stores and franchises
6 for the same reason, to prevent cigarettes of getting
7 into hands of minors?
8 A. No. That I can think of offhand.
9 (Whereupon, the following testimony is deemed
10 confidential material and subject to protective order
11 entered by the Superior Court of the County of Los
12 Angeles, State of California and is bound separately.)
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1 (Whereupon, this ends the testimony deemed
2 confidential and subject to protective order entered by
3 the Superior Court of the County of Los Angeles, State of
4 California.)
5 BY MR. MCGUIRE:
6 Q. Where do you market trading cards?
7 A. I'm sorry?
8 Q. Where are trading cards displayed in your
9 stores?
10 A. A basket on the front of the sales counters.
11 Q. Are they displayed close to the cigarettes?
12 A. No.
13 Q. Are they both in front of the store?
14 A. They're both in the sales counter area, yes.
15 I'm sorry. We're on this document?
16 Q. No. It doesn't look like I'm going to bother.
17 MS. LONG: What document are you not going to?
18 MR. KAMMER: That was 788 -- my copy had no 789.
19 MS. LONG: Mine either.
20 BY MR. MCGUIRE:
21 Q. 791 through 793, if you tell me what that
22 document is. It's authored by you, correct?
23 A. That's correct.
24 Q. It's dated 11-4-98, for the record. And it's to
25 Meg Holibaugh; is that right?
26 A. It's Holibaugh, H-o-l-i-b-a-u-g-h. And at that
27 time she was the division merchandiser that had
28 responsibility for cigarettes and tobacco for our

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1 southwest division, which is the Southern California
2 area. Actually, at that time it was more than Southern
3 California. It was southern, northern, and Arizona and
4 Nevada at that time.
5 Q. This is where they were selling cigarettes

6 individually?
7 A. Yes. We had contracted with a company to do
8 store observations about sales and related sales, et
9 cetera. And I happened to notice, going through the
10 material, I referenced to selling a single cigarette.
11 And I was telling them that if this is true, that we
12 reinforce that this is not a recommended practice.
13 Franchise stores.
14 Q. Did this study make any other reference to the
15 sale of cigarettes, or the marketing of cigarettes, or
16 promotion of cigarettes?
17 A. Only to the sale of cigarettes.
18 Q. What other recommendations do you recollect that
19 it made, or observations that it made?
20 A. It was mostly related sales. What went with
21 what and purchases, time of day sales were made.
22 Q. Okay. Let's go to --
23 MR. KAMMER: Are you marking that one as an
24 exhibit?
25 MR. MCGUIRE: No.
26 (Whereupon, the following testimony is deemed
27 confidential material and subject to protective order
28 entered by the Superior Court of the County of Los
207 Angeles, State of California and is bound separately.)
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1 (Whereupon, this ends the testimony deemed
2 confidential and subject to protective order entered by
3 the Superior Court of the County of Los Angeles, State of
4 California.)
5 BY MR. MCGUIRE:
6 Q. Okay. Last exhibit seems to deal with the same
7 subject matter. Although there is different authors.
8 I'll have you look at it. I'm going to recite now 4088
9 for identification is --
10 (Exhibit 4088 was marked for identification).

11 MS. LONG: 4087 --
12 MR. MCGUIRE: 87?
13 MR. KAMMER: 4088 is probably going to be 692
14 through 754.
15 MR. MCGUIRE: 4087. We're on 4088?
16 MR. KAMMER: Yeah. 87 is the one you're about
17 to ask.
18 MR. MCGUIRE: Okay. 692. It starts with 684
19 through 689, then 692.
20 THE WITNESS: I'm sorry.
21 MR. KAMMER: Okay. Back up. Okay. I misled
22 everyone. Can I interrupt long enough to say that the
23 prior Exhibit 4087 now consists of 676 through 683, and
24 ends 690 and 691.
25 MR. MCGUIRE: You heard it here first. I only
26 have it going to 691, Bill.
27 MR. KAMMER: Yeah 90 to 91. And now you're
28 marking 84 through 689, right?

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1 MR. MCGUIRE: Right.
2 MR. KAMMER: And 692 through whatever.
3 MR. MCGUIRE: I'm just trying to see if it's all
4 in -- yeah, looks like it goes through 754. Is that the
5 last page you have?
6 THE WITNESS: Yes.
7 MR. MCGUIRE: Okay. This is 4088.
8 MR. KAMMER: This is 4089?
9 THE REPORTER: It is 88.
10 MR. MCGUIRE: I started on a different page.
11 There you go.
12 MR. KAMMER: Go to a lot of trouble to customize
13 these.
14 MR. MCGUIRE: Thank you, Bill.
15 (Whereupon, the following testimony is deemed
16 confidential material and subject to protective order
17 entered by the Superior Court of the County of Los
18 Angeles, State of California and is bound separately.)
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2 (Whereupon, this ends the testimony deemed
3 confidential and subject to protective order entered by
4 the Superior Court of the County of Los Angeles, State of
5 California.)
6 MR. MCGUIRE: I don't think we have anything
7 more. And I hope you get your plane.
8 (Discussion off the record.)
9 MR. KAMMER: Same stipulations.
10 (Discussion off the record.)
11 (Whereupon, at 4:40 p.m. the deposition
12 concluded.)
13
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* * * * *

16 I hereby declare under penalty of perjury
17 that the foregoing deposition is my deposition under
18 oath; that these are the questions asked of me and my
19 answers thereto; that I have read my deposition and have
20 made the necessary corrections, additions or changes to
21 my answers that I deem necessary.

22
23 IN WITNESS THEREOF, I hereby subscribe my
24 name, this _____ day of _____ 2000.

25
26
27
28 THOMAS BONFIGLIO

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1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF SAN DIEGO)

4
5 I, Jeannette K. Jessup, CSR No. 8573, RPR, hereby
6 certify that I reported in shorthand the above
7 proceedings on Thursday, June 8, 2000, at 401 B Street,
8 Suite 1700, in the City of San Diego, County of San
9 Diego, State of California; and I do further certify that
10 the above and foregoing pages, numbered from 7 to 237
11 inclusive, contain a true and correct transcript of all
12 of said proceedings.

13 It was stipulated that the original deposition be
14 delivered to Mr. Kammer for the purpose of having the
15 witness read, correct and sign the deposition under
16 penalty of perjury; said original thereafter to be
17 forwarded to and maintained by Mr. Kammer until the time
18 of trial.

19
20 DATED: June 14, 2000.

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22
23 _____
24 JEANNETTE K. JESSUP
CSR NO. 8573, RPR

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